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Thursday
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Briefing on How To Use the Federal Register
For information on briefings in Washington, DC, and Chicago, IL, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: June 9 at 9:00 am
WHERE: Ralph Metcalfe Federal Building
Conference Room 328
77 West Jackson Blvd.
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: June 23 at 9:00 am
WHERE: Office of the Federal Register
Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 6695 of May 27, 1994

National Safe Boating Week, 1994

By the President of the United States of America

A Proclamation

The discovery and subsequent development of the United States evolved through the exploration and utilization of the abundant waterways of this great Nation. During the territorial expansion, our founders could scarcely have dreamed of the significant role our vast water resources would ultimately play in commerce, agriculture, industry, energy production, and boundless recreational activities. This year it is anticipated that more than 70 million Americans will enjoy on-the-water recreation throughout our country.

While boating can be a wonderful source of pleasure, improperly handled watercraft can be dangerous and sometimes even deadly. Tragically, approximately 800 persons die each year in boating-related accidents in our Nation alone. Because most of these accidents can be prevented, the United States Coast Guard and other Government agencies are working with volunteer organizations around the country to educate the boating public and to make safety the number one priority for all who use the Nation's waterways.

It is imperative that those enjoying the privilege of aquatic recreational activities must accept the responsibility of ensuring safety on the water. For boaters, this means respecting the marine environment, being well-informed, carrying, maintaining, and using the proper equipment, and remaining sober. Only then will boaters be prepared to prevent hazardous situations or deal with them if they arise. When boat operators and their passengers disregard their personal responsibilities, the consequences can be serious and direct. Statistics indicate that about 50 percent of boating accidents are alcohol-related and that more than 85 percent of the people who die while boating are not wearing personal floatation devices.

Accordingly, this year during National Safe Boating Week, proclaimed annually at the start of the summer boating season, recreational boaters are urged to heed the call of responsibility—to "Boat Smart, Boat Safe, Boat Sober."

In recognition of the need to promote safe boating practices, the Congress by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested the President to proclaim annually the week commencing on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning June 5, 1994, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to provide for the observance of this week. I also urge all Americans to become informed and to always practice safe recreational boating.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–13573
Filed 5–31–94; 2:24 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6696 of May 30, 1994

Prayer for Peace, Memorial Day, 1994

By the President of the United States of America

A Proclamation

Each year as summer approaches, we pause to honor the memory of those who died in service to our Nation. Even though the Cold War is over, there are still reminders—past and present—that the price of peace can be very dear indeed. One reminder, engraved in the stone memorial at the Omaha Beach Cemetery, eloquently states, "To these we owe our highest resolve, that the cause for which they died, shall live." Whether at Valley Forge or in the skies above Iraq, this tribute poignantly expresses the gratitude felt by all Americans as we remember the men and women in uniform who made the supreme sacrifice.

Each year, on the last Monday in May, we pause to pray for peace and to pay homage to those who have died defending our liberties, service men and women from all generations and from all wars. But this year, Memorial Day especially recalls those Americans who helped change the course of history and helped preserve a world in which the ideals of freedom and individual rights could flourish. One week from today, on June 6, we will observe the 50th Anniversary of D-Day. On that day in 1944, the world witnessed perhaps the greatest military action in history—and the beginning of the end of Nazi Germany's stranglehold on Europe.

The passage of 50 years has seen the birth of new generations of Americans who know of D-Day only from their history lessons. Fifty years may have dimmed the memories of some who were alive during World War II, but we need only look at those "reminders" of the price of freedom to understand what happened on that day 50 years ago.

Anzio, Utah Beach, Omaha Beach, Pointe du Hoc, and Normandy—each is an unforgettable chapter in our Nation's history. Each is a name that invokes memories of patriotism and valor, of teamwork and sacrifice.

Each reminds us that our Nation was founded on the belief that our democratic ideals are worth fighting for and, if necessary, worth dying for. We have a sacred obligation to remember for all time the names and the deeds of the Americans who paid that price for all of us.

In respect and recognition of those courageous men and women to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 30, 1994, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on

all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–13585
Filed 5–31–94; 2:39 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks honoring our veterans, see volume 30, issue 22 of the *Weekly Compilation of Presidential Documents*.

Presidential Documents

Proclamation 6697 of May 30, 1994

D-Day National Remembrance Day and Time for the National Observance of the Fiftieth Anniversary of World War II, 1994

By the President of the United States of America

A Proclamation

Fifty years ago on June 6, 1944, the largest armada of land, sea, and air forces ever assembled embarked on a great crusade across the English Channel to free the European continent of a tyranny that had taken hold and threatened to strangle the very freedoms we cherish most. Over 5,000 ships and 10,000 aircraft carried more than 130,000 soldiers, sailors, and airmen from the United States, Great Britain, Canada, Poland, France, Norway, the Netherlands, Czechoslovakia, New Zealand, Australia, Luxembourg, and Belgium to the shores of Normandy. More than 9,000 Americans never returned.

D-Day was considered crucial not only by the Allies, but also by the Axis powers. Field Marshall Irwin Rommel, commander of the enemy forces in the area, dubbed the first 24 hours as "The Longest Day," referring to the fact that if the Allies were successful in establishing a beachhead, many more units would follow, overwhelming the enemy in the West. However, for the Allied forces, June 6, 1944, was truly "The Longest Day" for a different reason. For the men who landed on the beaches that fateful day, each minute of combat was like an eternity as they were continuously bombarded by the unyielding Nazi forces.

But the enemy was unsuccessful, as the Allied forces had more than just their will to win urging them on. As defenders of justice, they were driven by the desire to restore the peace and freedom that the Nazi occupation had denied to millions of people. Anne Frank wrote of the impending invasion in her diary:

> "It's no exaggeration to say that all Amsterdam, all Holland, yes the whole west coast of Europe, right down to Spain, talks about the invasion day and night, debates about it, and makes bets on it and—hopes . . . . The best part of the invasion is that I have the feeling that friends are approaching. We have been oppressed by those terrible Nazis for so long, they have their knives at our throats, that the thought of friends and delivery fills me with confidence."

For Anne Frank, that deliverance never came, for she died in a concentration camp just months before the end of the war. But millions of others were delivered from oppression and fear. Those who landed on the beaches of Normandy, not only on D-Day but also throughout the rest of the war, were responsible for the liberation of many of the concentration camps as well as cities, towns, and villages throughout Europe that had suffered for so many years.

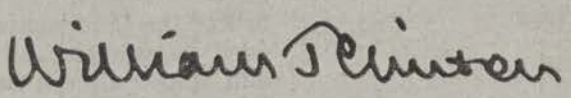
Thus, 1944 was a year of triumphs and sorrows. The Allies made great advances in bringing liberty to millions, while families and friends on the home front, faced with the knowledge that many of their loved ones would not return, continued to build the "Arsenal of Democracy."

It is to those millions of American men and women, veterans and civilians, those who came home from the war and those who made the ultimate sacrifice that we say "a grateful Nation remembers." We must never forget the high price paid by the valiant to ensure the freedoms of the many.

The Congress, by House Joint Resolution 303, has designated June 6, 1994, as "D-Day National Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 6, 1994, as D-Day National Remembrance Day, and May 30, 1994, through June 6, 1994, as a Time for the National Observance of the Fiftieth Anniversary of World War II. I call upon all Americans to observe this period with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.



[FR Doc. 94–13591
Filed 5–31–94; 2:52 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks at a ceremony honoring the heroes of D-Day and World War II, see volume 30, issue 22 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB69

Business and Industrial Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Business and Industry guaranteed loan program regulations, which are utilized by the Rural Development Administration (RDA), to provide procedures for interest rate buydown. This action is needed to implement provisions of the Supplemental Appropriations Act of 1993. The intended effect is to provide for payment by the Government of one percentage point of interest on certain guaranteed loans in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar, thereby reducing the effective rate of interest to be paid by the borrower.

DATES: Interim rule effective on June 2, 1994. Written comments must be received on or before August 1, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations, Analysis, and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, Ag-Box 0743, 14th Street and Independence Avenue SW., Washington, DC 20250–0743. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, Ag-Box 3221, 14th Street and Independence Avenue SW., Washington, DC 20250–3221, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the revised information collection and/or recordkeeping requirements included in this interim rule will not become effective until approved by the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag-Box 0743, Washington, DC 20250.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Rule

The Supplemental Appropriations Act of 1993, Public Law 103–50, authorized the Secretary of Agriculture to transfer certain funds previously authorized by Public Law 102–368 to a program designed to reduce the interest rate on certain Business and Industry Guaranteed loans. The funds will remain available through fiscal year 1994. Borrowers must be located in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar and unable to make the full payments on the proposed loan. The interest rate charged by the lender must not exceed the prime rate by more than 100 basis points. The lender will receive payments from the Government to reduce the effective interest rate paid by the borrower by one percentage point.

Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, we are making this action effective upon publication in the **Federal Register** without securing prior public comment. This action implements a program authorized by statute and intended to assist with economic recovery of areas affected by certain natural disasters. The program will only be available for new loans approved before the funding expires at the end of fiscal year 1994. It is necessary to implement the program as soon as possible to help stimulate the economy of the disaster area as soon as possible, to provide assistance to struggling businesses before they are forced to close, and to provide potential applicants the opportunity to develop applications and have them processed before the funding authority expires. Comments will be accepted for 60 days after publication and, if appropriate, adjustments will be made in the regulations based on the comments.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedure, Agriculture, Business and industry, Loan programs—Agriculture, Loan programs—Business, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 301 and 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.490 is added to read as follows:

§ 1980.490 Business and industry buydown loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103–50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants.* Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate.* (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as published in the Wall Street Journal and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown.* (1) To be eligible for a BIB loan, the business must provide evidence and the lender and FmHA must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, FmHA will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro ratably according to FmHA regulations.

(3) Interest payments by FmHA may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to FmHA for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. FmHA will promptly review the material submitted, determine whether the continued interest payments by FmHA are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by FmHA are terminated because the borrower's cash flow is determined to be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by FmHA on B&I loans other than those approved under this section. To be eligible for interest payments by FmHA, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103–50.

(e) *Duration of BIB loan program.* No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form FmHA 449–1 or by letter submitted with the Form FmHA 449–1.

(2) FmHA will identify a loan as a BIB loan by notation in the top margin of Form FmHA 449–29 and by the "type of assistance" code listed on Form FmHA 1940–3, in accordance with the Forms Manual Insert.

(3) FmHA will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and FmHA will execute Form FmHA 1980–48, "Business and Industry Interest Rate Buydown Agreement."

(4) The lender will request the interest payment from FmHA by submitting Form FmHA 1980–23, "Request for Business and Industry Interest Buydown Payment," to the FmHA servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The FmHA servicing office will review each request for consistency with FmHA regulations and the Form FmHA 1980–48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When FmHA purchases a portion of a loan, interest buydown will cease on the entire loan. Interest buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form FmHA 1980–23 for interest buydown payments through the date of termination.

(h) *Loan purposes.* (1) *Refinancing.* Section 1980.452 *Administrative* C.1. (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(2) *Agriculture.* Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities.* The provisions of § 1980.411 (a)(8) of this subpart will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration.* Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits.* Notwithstanding the provisions of § 1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements.* The equity requirements of § 1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral.* Section 1980.443 Administrative A. 2., 3., and 4. of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval.* A Form FmHA 449–14 may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA 449–14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA 449–14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of § 1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of $500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of $500,001 through $1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than $1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per § 1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee.* BIB loans will be processed under the Loan Note Guarantee option of § 1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under § 1980.101 (e)(2) of subpart B of this part.

(3) *Farm size.* Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications* If the applicant has already developed material for an FmHA Farmer Programs loan or if the financial and production information required by § 1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in § 1980.106(b) of subpart B of this part, Form FmHA 1980–25, "Farmer Programs Application," or Form FmHA 449–1, will be used as an application for assistance.

(5) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart B of this part, the provisions outlined in § 1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(iii) When applied to BIB applications, references in § 1980.114 of this part to "County Office" shall normally be construed to mean "State Office." References to "County Supervisor" shall be construed to mean "Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA official as designated by the State Director."

(6) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175 (c)(1) of Subpart B of this part except for those stipulated in § 1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in § 1980.180 (c) of Subpart B of this part except for those stipulated in § 1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§ 1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except § 1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

Dated: May 3, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13218 Filed 6–1–94; 8:45 am]

BILLING CODE 3210–32–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[No. 94–20]

RIN 1550–AA63

Acquisition of Control of Savings Associations; Applications, Approval Standards and Procedural Requirements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its acquisition of control regulations to implement section 211 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The final rule specifies additional factors that the OTS must consider in acting on applications to acquire savings associations under section 10(e) of the Home Owners' Loan Act (HOLA). The intended effect of these amendments is to conform OTS regulations to the statutory changes.

In addition, the OTS is amending its acquisition of control regulations to reflect the previous combination of the various holding company application forms in order to provide consistency between the forms and the regulations, to eliminate confusion, and to streamline the regulations.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: David Sjogren, Program Manager, Corporate Analysis, (202) 906–6739, Supervisory Operations, Robyn Dennis, Program Manager, (202) 906–5751, Policy, or Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is adopting a final rule that revises its acquisition of control regulations to include new supervisory factors that the FDICIA requires the OTS to consider in reviewing and acting on applications to acquire savings associations under section 10(e) of the HOLA. These changes are required by section 211 of the FDICIA, Public Law 102–242, 105 Stat. 2236. In addition, the OTS is amending its acquisition of control regulations to reflect the previous combination of the various holding company application forms.

On November 23, 1993, the OTS issued notice of a proposal to amend the agency's regulations implementing section 10(e) of the HOLA in accordance with section 211 of the FDICIA, and to amend the acquisition of control regulations to reflect the combination of the holding company application forms.[1] The public comment period expired on December 23, 1993.

Section 211 of the FDICIA provides that the OTS must disapprove an application to acquire a savings association under section 10(e) of the HOLA:

(1) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the HOLA; or (2) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the bank's home country.

Section 211 of the FDICIA also provides that the OTS's consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience and integrity of the officers, directors and principal shareholders of the company or savings association.

The OTS is adopting the final rule substantially as proposed. As proposed, the final rule, rather than including a separate definition of the term "principal shareholder," relies on existing terminology, "controlling shareholder," in the OTS acquisition of control regulations for this purpose, and requires the OTS to consider the competence, experience, and integrity of "controlling shareholders."[2]

In addition, the final rule provides that the OTS also will consider whether an applicant has provided the OTS with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the OTS deems appropriate to determine and enforce compliance with the HOLA.

[1] 58 FR 61850 (November 23, 1993).

[2] Under the OTS acquisition of control regulations, a "controlling shareholder" is "any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors." 12 CFR 574.2(g).

The OTS has determined, in general, not to require additional assurances from domestic applicants. The OTS currently seeks all information needed to consider holding company applications,[3] has promulgated regulations and issued forms that require savings and loan holding companies to file information with the OTS on a regular basis,[4] and has broad authority under section 10(b) of the HOLA to examine savings and loan holding companies and their affiliates. In addition, the OTS has broad authority to investigate and bring enforcement actions against holding companies and other affiliates of savings associations under section 10(g) of the HOLA, as well as other statutory provisions, including section 8 of the Federal Deposit Insurance Act. Nevertheless, section 10(e)(2)(C) gives the OTS broad discretion with respect to the circumstances under which additional assurances may be required, as well as the nature of such assurances, and the OTS may, where appropriate, seek additional assurances regarding the availability of information from an applicant and its affiliates.

With respect to holding company applications submitted by foreign acquirors, the OTS has, as a matter of policy, required foreign acquirors to enter into a foreign acquiror agreement.[5] Foreign acquiror agreements generally state, *inter alia*, that the foreign acquiror (i) voluntarily consents to United States jurisdiction for purposes of laws relating to United States depository institutions, (ii) shall designate agents in the United States for service of process, and (iii) shall permit the OTS to examine it to such extent as the Director may prescribe. In addition, as a policy matter, the OTS and its predecessor, the Federal Home Loan Bank Board, have generally required foreign acquirors to establish a United States holding company as the direct holding company of the acquired savings association.

The OTS will continue to require foreign acquirors to enter into foreign acquiror agreements, but will not require further assurances as a general matter. As noted above, the OTS, where appropriate in the context of a particular application, may seek additional assurances from a foreign acquiror that it will make information available to the OTS concerning itself or its affiliates.

In the case of applications involving a foreign bank, the OTS will consider whether the bank is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in the foreign bank's home country. In the proposal, the OTS requested comment on the standards to be applied in this area, and on whether the OTS should subject foreign bank holding companies to the same requirement. As the statute refers only to foreign banks, the final rule, as was the case with the proposal, refers only to foreign banks.

The regulations of the Board of Governors of the Federal Reserve System (Federal Reserve Board) implementing section 202(a) of the FDICIA set forth the basis on which the Federal Reserve Board will determine whether a foreign bank is subject to "comprehensive supervision or regulation on a consolidated basis."[6] The Federal Reserve Board regulation provides that the Federal Reserve Board will determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation.[7]

The OTS believes that Federal Reserve Board regulations set forth appropriate standards in this area, and is not currently aware of any compelling reasons to use a standard differing from that used by the Federal Reserve Board. Accordingly, the final regulation generally incorporates the standard set forth in the Federal Reserve Board's regulations. OTS believes this approach also will promote regulatory uniformity by applying similar standards to foreign banks that propose to acquire banks and savings associations.

The OTS also requested comment regarding the manner in which the OTS should implement this standard, *i.e.*, whether the OTS should conduct a case-by-case analysis, or adopt some other approach, such as a country-by-country, or regulator-by-regulator approach. The OTS has decided to adopt the approach taken by the Federal Reserve Board. The Federal Reserve Board has stated that as the standard requires a bank-specific determination, it will address the standard on a case-by-case basis.[8]

II. Summary of Comments

The OTS received two comments regarding the proposed amendments, one from a savings association and one from a thrift industry trade association. The savings association expressed general support for the proposed rule. The trade association commenter addressed four issues.

First, the commenter requested that the OTS, in defining the term "principal shareholder," consider alternatives to the ten percent threshold, and urged the OTS to address the merits of a 25 percent threshold.

The OTS continues to believe that a ten percent threshold is appropriate. Under the OTS acquisition of control regulations, an individual acquiror generally acquires control of a savings association or savings and loan holding company, subject to rebuttal, upon acquiring over ten percent of a class of voting stock and acquiring a "control factor."[9] Such an acquiror must submit a change of control notice or rebuttal of control prior to exceeding the ten percent threshold.[10]

As the OTS noted in the proposal, the statutory language does not prevent the OTS from considering the extent to which a "principal shareholder" or "controlling shareholder" is involved in the affairs of a savings association or savings and loan holding company. An underlying purpose of section 211 is to permit the OTS to consider the abilities of the principal shareholders of savings associations and savings and loan holding companies in appropriate situations, including situations where a principal shareholder has or could have a significant effect on the financial and managerial resources, future prospects, or safety and soundness of a savings association or savings and loan holding company. Thus, the OTS, in weighing the shareholder's experience and

[3] See OTS Form H-(e)_____.

[4] See 12 CFR 584.1 and OTS Forms H-(b)10 and H-(b)11.

[5] In addition, the OTS has required foreign acquirors that attempt to rebut a rebuttable determination of control under 12 CFR 574.4(b) and 574.4(e) to file a foreign acquiror agreement.

[6] See 58 FR 6348, 6360–6361 (12 CFR 211.24(c)(1)(ii)).

[7] *Id.* The regulation sets forth certain factors that the Federal Reserve Board will assess, including the extent to which the home country supervisor: Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide; obtains information on the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise; obtains information on the dealings and relationships between the foreign bank and its foreign and domestic affiliates; receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information; and evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

[8] The Federal Reserve Board has stated that it expects, as it acts on applications, to use information already reviewed regarding comprehensive supervision in particular countries to make judgments without requiring significant input from similar applicants chartered in the same country. See 58 FR 6348, 6349.

[9] 12 CFR 574.4 (b) and (c).

[10] See 12 CFR 574.3, 574.4.

competence, would give significant consideration to whether the shareholder proposes to be a passive investor. For instance, a principal shareholder who holds a passive investment would not need the same level of experience and competence required of a principal shareholder who could exert significant influence upon the direction of the savings association or savings and loan holding company.

The OTS notes that its approach is similar to the approach taken by the Federal Reserve Board.[11]

Second, the commenter responded to the OTS's request for comment as to whether the OTS should seek specific assurances concerning the operations or activities of an acquiror or its affiliates.[12] The commenter urged that the OTS not add requirements regarding such assurances to the proposed regulations. As previously noted, the OTS generally will not require specific assurances regarding these matters.

Third, the commenter responded to the OTS's specific request for comment on the manner in which assurances should be presented to the OTS as to the availability of information on the operations or activities of certain companies. The commenter observed that it is a federal crime to file false statements with the OTS, and, therefore, that the assurances need not take the form of an affidavit or certification.

The OTS has, under various circumstances, required materials to be submitted in the form of an affidavit or certification. As noted above, the OTS is not generally requiring applicants to provide specific assurances regarding the availability of information. In the event that the OTS requires additional assurances in a particular case, the OTS will determine what form of assurance is appropriate under the circumstances.

Fourth, the commenter addressed the OTS's determination of whether a foreign bank is subject to "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country." The commenter noted that the OTS has not traditionally made determinations regarding this issue, and urged the OTS to consider deferring to or otherwise using the resources of the Federal Reserve Board and other banking agencies. The commenter urged the OTS to take advantage of the expertise of other agencies in this area.

As the OTS must act on applications under section 10(e) of the HOLA, it is the OTS's responsibility to determine whether the applicant satisfies the applicable standards. Nevertheless, the OTS intends to consider previous determinations made by the Federal Reserve Board (or other applicable Federal regulatory agency) regarding supervision or regulation of a foreign bank, and applicants should provide such information to the OTS in the application process. The OTS believes that consideration of determinations made by other regulatory agencies decreases the burden on applicants to provide information, and facilitates prompt processing of applications. The OTS recognizes that such determinations may not be available in every case, because the Federal Reserve Board (and the OTS) make their determinations on a case-by-case (rather than, *e.g.*, a country-by-country) basis. In addition, as stated above, the OTS has generally incorporated the Federal Reserve Board's standards in this area.

[11] See 58 FR 471, 472 (January 6, 1993), and 58 FR 4073, 4074 (January 13, 1993), in which the Federal Reserve Board defines "principal shareholder" using a ten percent threshold.

[12] In this context, in response to the OTS's request for comment regarding foreign acquiror agreements, the commenter made general observations regarding the enforceability of foreign acquiror agreements.

III. Executive Order 12866

The Director of the OTS has determined that this proposal does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

IV. Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends part 574, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 574—[AMENDED]

1. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

2. Section 574.6 is amended by revising paragraph (a) to read as follows:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application, notice, or informational filing required by § 574.3 of this part shall be filed on the Application/Information Filing H–(e) _____ form. (As specified in the form's instructions, the blank line following the H–(e) should be filled in by applicants with the appropriate "1", "1–S", "2", "3", or "4" depending on the type of application.) The specific application requirements for each type of filing are indicated on the form. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of paragraph (f) of this section. In the case of an application involving a merger (including a merger with an interim association) the Application/Information Filing H–(e) _____ form shall be used in lieu of an application that otherwise would be required for such merger under §§ 546.2, 552.13, and 563.22 of this chapter.

(1) *H–(e)1.* This application type shall be filed under § 574.3(a) of this part by a company, other than a savings and loan holding company, for approval to acquire direct or indirect control of one savings association.

(2) *H–(e)1–S.* This application type shall be filed under § 574.3(a) of this part by a savings association for approval to reorganize into a holding company structure, provided that the proposed transaction satisfies each of the conditions for automatic approval specified in § 574.7 (a)(2) and (a)(3) of this part.

(3) *H–(e)2.* (i) This application type shall be filed under § 574.3(a) of this part:

(A) By a savings and loan holding company for approval to acquire and hold separately one or more savings associations;

(B) By any other company for approval to acquire and hold separately more than one savings association;

(C) By a savings and loan holding company for approval of an acquisition of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8 of this part; or

(D) By any director, officer, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of a savings and loan holding company for approval of an acquisition of one or more savings associations.

(ii) The OTS may determine as a general matter or on a case-by-case basis not to require application information not relevant to transactions described in paragraphs (a)(3)(i) (C) and (D) of this section.

* * * * *

3. Section 574.7 is amended by revising the section heading and paragraph (c) to read as follows:

§ 574.7 Determination by the OTS.

* * * * *

(c) *Application criteria.* (1) The OTS may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8 of this part:

(i) If the OTS finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the SAIF or BIF; or

(ii) If the acquiror fails or refuses to furnish information requested by the OTS.

(2) Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and controlling shareholders of the company or association. In connection with the applications filed pursuant to §§ 574.6 (a)(3) and (a)(4), and 574.8 of this part, the OTS will also consider the convenience and needs of the community to be served. Moreover, the OTS shall not approve any proposed acquisition:

(i) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(ii) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the OTS finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(iii) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the Home Owners' Loan Act; or

(iv) In the case of an application by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the home country of the foreign bank. For purposes of this paragraph (c)(2)(iv), "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities" shall be determined using the standards set forth at 12 CFR 211.24(c)(1)(ii).

* * * * *

Dated: March 1, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–13400 Filed 6–1–94; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[FR Doc. 94–7844]

Small Business Investment Companies; Valuation Guidelines; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: SBA is correcting the presentation of certain information concerning valuation guidelines which was included in the final rule published in the **Federal Register** on April 8, 1994 (59 FR 16933). Certain paragraphs were not printed in bold type as intended.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Senior Policy Advisor, Investment Division; Telephone (202) 205–6510.

SUPPLEMENTARY INFORMATION: On April 8, 1994, SBA published a final rule (59 FR 16933) which included the addition of a new appendix III to part 107 of title 13 of the Code of Federal Regulations. The appendix sets forth valuation guidelines for Small Business Investment Companies (Licensees). In Section III of appendix III, it was SBA's intention to have certain paragraphs printed in bold type and other paragraphs printed in regular type. Bold type was intended to identify a model valuation policy which could be adopted verbatim by Licensees, while regular type was intended to identify supplementary information which would assist Licensees in interpreting and applying the model policy. When the final rule was printed, however, none of the text in Section III appeared in bold type.

In order to allow Licensees to distinguish between the model valuation policy and the supplementary information, SBA is publishing a reorganized version of appendix III. Section III of the reorganized appendix is retitled "Model Valuation Policy" and includes only those paragraphs originally intended to be printed in bold type. A new Section IV is entitled "Valuation Policy With Supplementary Information" and contains both the model and supplementary paragraphs with no difference in type face. An explanation of the difference between Sections III and IV, and how each may be used by Licensees, is provided in paragraphs H. and I. of Section II of the appendix.

In FR Doc. 94–7844, published in the **Federal Register** on Friday, April 8, 1994, appendix III of 13 CFR part 107 is corrected to read as follows:

Appendix III To Part 107—Valuation Guidelines for SBICs

I. Introduction

This appendix describes the policies and procedures to which Licensees (SBICs and SSBICs) must conform in valuing their Loans and Investments and provides guidance as to the techniques and standards which are generally applicable to such valuations.

The need for clearly defined valuation policies and procedures and understandable techniques arises in connection with the requirement that Licensees report the worth of their portfolios to investors and SBA. This information assists SBA in its assessment of the overall operational performance and financial condition of individual Licensees and of the industry.

II. Overall Guidelines

A. Definitions

1. *Asset Value* means the amount that the general partners or board of directors of a Licensee have established as a current value in accordance with its Valuation Policy.

2. *Marketable Securities* means securities for which market quotations are readily available and the market is not "thin", either in absolute terms, or relative to the potentially saleable holdings of the Licensee and other investors with saleable blocks of such securities. These securities are valued as follows: (a) For over-the-counter stocks, taking the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, taking the average of the close for the valuation date and the preceding two days. This classification does not include securities which are subject to resale restrictions, either under securities laws or contractual agreements, although other securities of the same class may be freely marketable.

3. *Other Securities* means all Loans and Investments not defined in paragraph A.(2) of this section. Such securities shall be valued at Asset Value. Most SBIC and SSBIC investments will fall in this classification.

4. *Valuation Policy* means the official document of a Licensee that definitively sets forth the Licensee's methods of valuing Loans and Investments in accordance with the requirements of § 101(g) and this appendix.

B. Objective

The goal of a Licensee's valuation process is to value its Loans and Investments.

However, the very nature of Licensees' investments sometimes makes the determination of fair market value problematical. In most cases there is no market for the investment at the time of valuation. Therefore, except where market quotations are readily available and the markets are not "thin", the Boards of Directors or General Partners are necessarily responsible for determining in good faith the value of Loans and Investments.

Determination of value will depend upon the circumstances in each case. No exact formula can be devised that will be generally applicable to the multitude of different valuation issues that will arise. This is especially true for semiannual valuation updates of relatively new investments for which current results either exceed or do not meet the Small Concern's forecasts. A sound valuation should be based upon all of the relevant facts, with common sense and informed judgement influencing the process of weighing those facts and determining their significance in the aggregate.

C. General Considerations

The Asset Value of Loans and Investments will depend upon the circumstances of each individual case and will be based upon the nature of the asset and the stage of a company's existence.

In negotiating the terms and conditions of an investment with a Small Concern, the Licensee, in effect, establishes an initial valuation for the investment, which is cost. Cost shall be the Asset Value until there is a basis to increase or decrease the valuation.

Unrealized appreciation should be recognized when warranted, but should be limited to those investments that have a sustained economic basis for an increase in value. Temporary market fluctuations or a temporary increase in earnings should not be the cause or sole reason for appreciation.

Unrealized depreciation should be recorded when portfolio companies show sustained unfavorable financial performance. Continuous close scrutiny of Loans and Investments will provide insight into the business cycles and problems encountered by small business concerns. This insight will allow the Licensee to differentiate between a temporary downturn or setback and a long-term problem indicating a measurable decline in Asset Value.

When a decline in Asset Value appears permanent, a complete or partial write-off of the asset (i.e., recording a realized loss rather than unrealized depreciation) should occur. Some of the more obvious indications of permanent impairment of an investment include the termination of business operations, a petition for bankruptcy protection or liquidation, or the absence of a verifiable forwarding address of the business or its proprietor(s). Less obvious situations may include the loss of major revenue accounts, the shut down of a critical distribution channel, an adverse legal or regulatory ruling, or the expiration of a priority claim on collateral in a distressed Small Concern. These and other possible circumstances should be assessed on a case-by-case basis, with supporting documentation on file.

D. Valuation Responsibility

As specified in 13 CFR 107.101(g), the Licensee's Board of Directors or General Partners have the sole responsibility for determining Asset Value. In determining Asset Value, the Board of Directors or General Partners must satisfy themselves that all appropriate factors relevant to a good faith valuation have been considered and that the methods used are reasonable and prudent and are consistently applied. Although the Board of Directors or General Partners have the ultimate responsibility for determining Asset Value, they may appoint management or other persons to assist them in such determinations and to provide supporting data and make the necessary calculations pursuant to the Board's or General Partners' direction. It is essential that a careful, conservative, yet realistic approach be taken by Licensees in determining the Asset Value of each Loan and Investment.

As part of the annual audit of the Licensee's financial statements, the Licensee's independent public accountant has responsibility to review the Licensee's valuation procedures and implementation of such procedures including adequacy of documentation. The independent public accountant also has reporting responsibility regarding the results of this review. (See appendix I to this part, section III and section V, paragraphs I and J).

E. Frequency of Valuation

Loans and Investments shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year, *Provided however,* That Licensees without Leverage need only perform valuations once a year. On a case-by-case basis, SBA may require valuations to be made more frequently. Only valuations performed as of the fiscal year-end are required to be reviewed by the Licensee's independent public accountant, as discussed in paragraph D. of this section. Each Licensee shall forward a valuation report to SBA within 90 days of the end of its fiscal year in the case of annual valuations, and within thirty days following the close of other reporting periods. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter. Since the valuations will only be as sound as the timeliness of the financial information upon which they are based, Licensees shall require frequent financial statements from Small Concerns. Monthly financial statements are normally appropriate.

F. Written Valuation Policy

Each Licensee shall establish a written Valuation Policy approved by its Board of Directors or General Partners that includes a statement of policies and procedures that are consistent with Section III of this appendix.

G. Documentation

Each Licensee shall prepare and retain in its permanent files a valuation report as of each valuation date documenting, for each portfolio security, the cost, the current Fair Value and the previous Fair Value, plus the methodology and supporting data used to determine the value of each such portfolio security. The minutes of meetings of Boards of Directors or General Partners at which valuations are determined will contain a resolution confirming that the valuations of each portfolios security were determined in accordance with Licensee's duly adopted valuation procedures and will incorporate by reference the valuation report signed by each Director or General Partner along with any dissenting valuation opinions.

H. Instructions

A model Valuation Policy is presented in Section III below. Licensees may adopt the model in its entirety or make appropriate modifications, additions or deletions. Any changes, however, must be generally consistent with the model.

A second version of the model Valuation Policy is presented in Section IV. This section repeats the language of Section III, but is expanded to include additional explanatory paragraphs. These paragraphs are commentary provided by SBA to assist Licensees in interpreting and applying some of the model valuation criteria. They may be adapted for inclusion in the Licensee's Valuation Policy, if desired.

I. Approval

1. Any Licensee that utilizes the exact wording of Section III, without any additions, deletions, or changes will be presumed to have an acceptable Valuation Policy. It is acknowledged, however, that this wording may not be entirely applicable to all Licensees. If a Licensee wants to adopt a Valuation Policy that is different from Section III, the Licensee must obtain SBA's written approval of such Policy. If changes from the wording of Section III are minor, it is suggested that the Licensee indicate deletions with a caret (^) and underline additions.

2. Applicants for either a Section 301(c) or 301(d) license must submit their Valuation Policies for approval as part of the licensing application process.

III. Model Valuation Policy

A. General

1. The [Board of Directors] [General Partners] have sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.

2. Loans and Investments shall be valued individually and in the aggregate [at least semi-annually—as of the end of the second quarter of the fiscal year and as of the end of the fiscal year.] [at least annually—as of the end of the fiscal year.] Fiscal year-end valuations are audited as set forth in 13 CFR Part 107 Appendix III, Section II, paragraph D.

3. This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.

B. Interest-Bearing Securities

1. Loans shall be valued in an amount not greater than cost, with Unrealized

Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is *presumed* to be in doubt when one or both of the following conditions occur: (i) Interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

4. The carrying value of interest-bearing securities shall not be adjusted for changes in interest rates.

5. The valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.

c. Equity Securities—Private Companies

1. Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.

2. Valuation should be reduced if a company's performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.

3. The anticipated pricing of a Small Concern's future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

4. Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent significant equity financing that includes substantially the same group of investors as the prior financing should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of prior securities.

5. If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.

6. Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or in the event of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.

7. With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.

8. Warrants should be valued at the excess of the value of the underlying security over the exercise price.

D. Equity Securities—Public Companies

1. Public securities should be valued as follows: (a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, take the average of the close for the valuation date and the preceding two days.

2. The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.

3. When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.

IV. Valuation Policy With Supplementary Information

A. General

1. The [Board of Directors] [General Partners] have sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.

2. Loans and Investments shall be valued individually and in the aggregate [at least semi-annually—as of the end of the second quarter of the fiscal year and as of the end of the fiscal year.] [at least annually—as of the end of the fiscal year.] Fiscal year-end valuations are audited as set forth in 13 CFR Part 107, Appendix III, Section II, paragraph D.

3. This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.

B. Interest-Bearing Securities

1. Loans shall be valued in an amount not greater than cost, with Unrealized Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is presumed to be in doubt when one or both of the following conditions occur: (i) Interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

a. Licensees may rebut this presumption by providing evidence of collectibility satisfactory to SBA. Such evidence may include the existence of collateral, the value of which has been verified through an appraisal by an independent professional appraiser acceptable to SBA. Such an appraisal shall be at liquidation value (net of liquidation costs) and shall have been performed within the 12 months immediately preceding the valuation date. In considering whether collateral provides an appropriate basis for valuations, SBA will review the Licensee's operating history for evidence concerning its willingness and ability to pursue available remedies (including foreclosure) in default situations.

b. For those Licensees primarily involved in making loans, the use of a loan classification system is strongly encouraged to help manage portfolios and determine Asset Values, with loans that warrant extra attention being flagged by the Licensee's management. Such a "watch list" can also be used to report to the Board of Directors or General Partner(s). For each loan placed on the watch list, a reason or statement should describe the particular situation. Danger signals that should alert the Licensee to potential problems include delinquency, a

lack of profitability, weak or decreasing equity, increasing debt load, a deteriorating cash position, an abnormal increase in accounts payable, inaccurate financial information, insurance cancellation, judgments and tax liens, family problems, loss of employees, collateral problems, slowdown in inventory turnover, poor maintenance of plant and equipment, and heavy reliance on short term debt.

c. Upon careful consideration of all the relevant factors, the Board of Directors or General Partners shall determine which loans require recognition of Unrealized Depreciation. It is a good rule of operation for a Licensee to perform downward valuations earlier rather than later. When the quality of a loan recovers, a higher Asset Value may subsequently be assigned.

4. The carrying value of interest-bearing securities shall not be adjusted for changes in interest rates.

5. The valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.

a. Accepted methods for valuing convertible debentures generally involve one of two approaches. The first approach views the debenture as a debt obligation. Under this approach, the Licensee should utilize the loan valuation techniques described in this section above. The second approach considers the conversion of all convertible securities of the same class into their common stock equivalent, taking into account dilution, and a subsequent valuation of the Licensee's proportionate equity interest. Valuation of this equity interest should follow the equity valuation techniques described in Paragraph C. of this section.

b. Normally, the reported value is the higher of these two alternatives. However, Licensees should disregard higher equity values and retain lower debt-based valuations if there are circumstances which make conversion undesirable. When equity considerations govern the Asset Value assigned, all underlying factors should be disclosed.

C. Equity Securities—Private Companies

1. Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.

2. Valuation should be reduced if a company's performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.

3. The anticipated pricing of a Small Concern's future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

4. Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent significant equity financing that includes substantially the same group of investors as the prior financing should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of prior securities.

5. If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.

6. Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or in the event of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.

a. Under these conditions, valuation factors that may be considered include:

(1) The utilization of a multiple of earnings, cash flow, or revenues, which are commensurate with the multiples which the market currently accords to comparable companies in similar businesses and industries, with an appropriate discount for conditions such as illiquidity or a minority position. Care should be taken to use only comparable companies, including not only business similarities but also similarities as to size, financial condition, and earnings outlook. However, in order for comparative market prices to be meaningful, data for a representative sample of similar companies must be available.

(2) Among the more important factors to be considered in a particular case are (i) the nature of the business, (ii) the risk involved, and (iii) the growth, stability or irregularity of earnings and cash flows. A company with a positive earnings trend and a favorable outlook may command a capitalization factor (multiplier) in the marketplace that will result in a stock valuation well above book value. When the gross value of a small concern is computed by applying a capitalization rate to pre-interest, pre-tax earnings, the value of equity securities is derived by subtracting the outstanding debt of the concern from the gross value. While capitalization rates do vary, an appropriate rate can be determined by analyzing rates for comparable companies in the same industry. Investigating similar companies in the same industry or geographic area can be done directly or through published material from sources such as the Value Line, Standard and Poor's, Robert Morris and Associates, or any other of the numerous sources available for comparative industry data.

(3) Another method discounts the present value of estimated future proceeds to a Licensee, including dividend income and sales of securities, using a discount rate that reflects the degree of risk of the equity interest.

(4) One may also utilize the recent sale prices of comparable blocks of the issuer's securities in arm's length transactions.

b. Equity interests or limited partnership interests without the benefit of stock certificates and which generally define a certain percentage of the profits to be allocated to each of the investors based on its relative contributions should be valued in a manner similar to the valuation methods described in this section.

7. With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.

a. Liquidation value will depend on the decreasing value of wasting assets, the costs experienced by the business being liquidated, the expenses borne by the Licensee in order to be able to realize any liquidating value, the elapsed time until such net proceeds can be realized, the ranking of the Licensee's claims relative to other security interests and subordination agreements, and the probability of any ultimate realization of value.

b. Incorporating this approach as a normal step in valuation can provide improved understanding of the downside of an investment.

c. Licensees should recognize unrealized appreciation or depreciation, as appropriate, on Assets Acquired in Liquidation of Loans and Investments. In order to recognize Unrealized Appreciation, asset values must be verified by an appraisal which meets all the conditions specified in the preceding paragraph; *Provided, however,* that if the assets acquired constitute a going concern, such assets may be appraised as a going concern rather than at liquidation value. Unrealized Appreciation may not be recognized if the Licensee does not benefit from such appreciation. For example, an asset acquired through foreclosure should not be carried at a value greater than the defaulted loan balance plus any expenses and penalties to which the Licensee is entitled.

8. Warrants should be valued at the excess of the value of the underlying security over the exercise price.

a. Valuation of debt with detachable warrants can be done similarly to convertible debt by treating the debt and warrants as a unit, or, alternatively, the debt can be valued on its own basis as a debt instrument, and the warrants separately. If the warrants are valued separately, the following factors must be taken into account:

(1) Current value of issued shares.

(2) The differential between the exercise private and the underlying share values if the current share values are higher than the exercise price.

(3) Time until expiration dates are reached or dates of changes in terms of exercise prices.

(4) Number of shares into which the warrants are exercisable on various dates.

(5) Restrictions on sale of the underlying stock.

(6) Restrictions on the transferability of the warrants.

(7) Registration rights for the warrants or the underlying shares.

(8) Financial ability of the Licensee to perform the exercise of its rights or to sell its warrants.

(9) The ultimate desirability, if any, of exercising the rights given by the warrants.

D. Equity Securities—Public Companies

1. Public securities should be valued as follows: (a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, take the average of the close for the valuation date and the preceding two days.

a. However, securities are not deemed to be freely marketable in those situations where such securities are very thinly or infrequently traded, or may be lacking in truly representative market quotations, or where the market for such securities cannot absorb the quantity of shares which the Licensee and similar investors may want to sell.

b. In such cases, Asset Value must be determined by the Board of Directors or General Partners.

2. The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.

3. When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.

Dated: May 19, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–13322 Filed 6–1–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–167–AD; Amendment 39–8923; AD 94–11–07]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes, that requires inspection of the landing gear brakes for wear, and replacement of the brakes if the wear limits prescribed in this amendment are not met. This amendment also requires that the specified maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes was published in the **Federal Register** on January 27, 1994 (59 FR 3798). That action proposed to require the inspection of certain landing gear brakes for wear, and the replacement of brakes if the wear limits prescribed in the proposal are not met. That action also proposed that the specified maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter requests that NOTE 2 of the proposal be clarified. This commenter points out that proposed NOTE 2 states, "* * * Brake units having wear indicators set at 1.06 inch will be considered to be fully worn when either wear indicator pin is 1.0 inch or less above the surface of the carrier. * * *" In effect, this wording permits a total brake wear (from new to fully worn brake) of only 0.06 inch. This clearly is incorrect. This commenter states that a correctly set wear indicator pin protrudes above the surface of the carrier when in normal operation, but will be flush with the surface when the brake is fully worn. Thus, the dimension by which the pin protrudes above the surface of the carrier is the amount of wear still available. Therefore, a wear indicator pin set for the existing limit of 1.06 inch will protrude above the surface of the carrier by 0.06 inch when the new wear limit of 1.00 inch is reached. The FAA concurs and has revised NOTE 2 of the final rule to clarify this point.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100 Model BAC 1–11–200 and –400 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 10 Model BAC 1–11–200 series airplanes of U.S. registry and 2 U.S. operators of these airplanes will be affected by this proposed AD. For these airplanes and operators, although the rule requires the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs relative to that requirement is involved; such actions are currently a part of the current maintenance program. However, it is estimated that it will take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the revision into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the requirement to revise the FAA-approved maintenance inspection program on U.S. operators of Model BAC 1–11–200 series airplanes is estimated to be $110, or $55 per operator.

The FAA estimates that 20 Model BAC 1–11–400 series airplanes of U.S. registry and 19 U.S. operators of these airplanes will be affected by this AD. It is estimated that it will take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the revision into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of that requirement on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $1,045, or $55 per operator.

Additionally, the FAA estimates that for operators of Model BAC 1–11–400 series airplanes, it will take approximately 2 work hours per airplane to shorten the wear pins for replacement brakes, and 8 work hours per airplane to change the brakes, at an average labor rate of $55 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $912 per airplane. Based on these figures, the total cost impact of these requirements on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $29,240, or $1,462 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–11–07 British Aerospace: Amendment 39–8923. Docket 93–NM–167–AD.

Applicability: All Model BAC 1–11–200 and –400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

BRITISH AEROSPACE MODEL BAC 1–11–200 and –400 SERIES AIRPLANES EQUIPPED WITH BENDIX BRAKES

Airplane model	Brake part No.	Maximum brake wear limit (inch/mm)
BAC 1–11–200	2601225–1 .	0.75 inch (19.1 mm)
BAC 1–11–400	2601240–1 .	1.0 inch (25.4 mm)

Note 1: Measuring instructions for Bendix brakes can be found in Revision 4 of the Allied Signal Component Maintenance Manual.

Note 2: Revision 4 of the Allied Signal Component Maintenance Manual specifies a brake wear limit of 1.06 inch for brake part number 2601240–1. That brake wear limit is superseded by the brake wear limit of 1.0 inch specified above for that brake part number. Revision 5 of the Allied Signal Component Maintenance Manual will reflect the revised brake wear limit of 1.0 inch. Brake units having wear indicators set at 1.06 inch will be considered to be fully worn when either wear indicator pin is 0.06 inch or less above the surface of the carrier, provided the wear indicator pin has not been shortened on that brake unit.

Note 3: Each operator should provide a method of identifying modified brakes until Revision 5 of the Allied Signal Component Maintenance Manual has been issued. Revision 5 of the manual will define a method of brake identification and reflect the brake wear limits specified above. A paint scheme similar to that used to differentiate between new and refurbished brakes could be used, for example, if a different color is used.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 5, 1994.

Issued in Renton, Washington, on May 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13236 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AGL–5]

Modification of Class E Airspace; Sault Ste. Marie, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sault Ste. Marie, Michigan to change the controlled airspace operations from part-time to continuous operation. Controlled airspace to the surface, and a control zone is needed for instrument flight rules (IFR) operations at the Chippewa County International Airport. Currently, at least half of the operations at Chippewa County International Airport are scheduled during the times when the Class E2 airspace is inactive (uncontrolled). The intended effect of this proposal is to provide adequate Class E airspace for IFR operators at Chippewa County International Airport.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E2 airspace from part-time use to continuous use at Sault Ste. Marie, Michigan. This modification provides adequate controlled airspace to accommodate existing operations at Chippewa County International Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E2 airspace at Sault Ste. Marie, Michigan to provide adequate controlled airspace to accommodate existing operations at Chippewa County International Airport. The modification changes the operations from part-time use to continuous use operations.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL MI E2 Sault Ste. Marie, MI [Revised]

Chippewa County International Airport
(Lat. 46°14'52" N., long. 84°28'15" W.)

Within a 4.4-mile radius of the Chippewa County International Airport.

* * * * *

Issued in Des Plaines, Illinois, on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13443 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–4]

Modification of Class E Airspace; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace near Freeport, IL, to accommodate a new Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace near Freeport, IL, (59 FR 16153). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL. This modification increases the Class E airspace area radius from 6.4 miles to 6.5 miles. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain IFR operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL IL E5 Freeport, IL [Revised]

Freeport, Albertus Airport, IL
(Lat. 42°14'48" N., long. 89°34'55" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albertus Airport.

* * * * *

Issued in Des Plaines, Illinois on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13444 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–2]

Establishment of Class E Airspace; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable Visual Flight Rules (VFR) requirements.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Savanna, IL (59 FR 16155). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Savanna, IL, to accommodate a new VOR/DME–A instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for IFR operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL IL E5 Savanna, IL [New]

Savanna, Tri-Township Airport, IL
(Lat. 42°02'48" N., long. 90°06'34" W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois, on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13447 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27761; Amdt. No. 1603]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the FEDERAL REGISTER expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. This, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification, and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 20, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPS;

§ 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

...Effective Aug 18, 1994

Bowling Green, OH, Wood County, VOR RWY 18, Amdt 12
Bowling Green, OH, Wood County, VOR/DME RNAV RWY 27, Amdt 1
Toledo, OH, Toledo Express, VOR/DME or GPS RWY 34, Amdt 6
Toledo, OH, Toledo Express, NDB or GPS RWY 7, Amdt 24
Toledo, OH, Toledo Express, ILS RWY 7, Amdt 26
Toledo, OH, Toledo Express, ILS RWY 25, Amdt 6
Toledo, OH, Toledo Express, RADAR-1, Amdt 19
Borger, TX, Hutchinson County, VOR RWY 17, Amdt 7
Borger, TX, Hutchinson County, VOR/DME RWY 35, Amdt 2

...Effective July 21, 1994

Blytheville, AR, Blytheville Muni, NDB RWY 36, Amdt 1
Blytheville, AR, Blytheville Muni, NDB RWY 18, Amdt 1
Chino, CA, Chino, VOR-B, Amdt 3
Ballinger, TX, Bruce Field, NDB RWY 35, Amdt 1

...Effective June 23, 1994

West Memphis, AR, West Memphis Muni, VOR/DME-A, Amdt 5
West Memphis, AR, West Memphis Muni, NDB-B, Amdt 2
West Memphis, AR, West Memphis Muni, NDB RWY 17, Amdt 9
West Memphis, AR, West Memphis Muni, ILS RWY 17, Amdt 1
West Memphis, AR, West Memphis Muni, RADAR-1, Amdt 9
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Eastport, ME, Eastport Muni, NDB RWY 33, Orig
Lee's Summit, MO, Lee's Summit Municipal, VOR-B, Amdt 3
Akron, OH, Akron Fulton Intl, LOC RWY 25, Amdt 13
Akron, OH, Akron Fulton Intl, NDB RWY 25, Amdt 13
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt 10
Cleveland, OH, Burke Lakefront, NDB or GPS RWY 24R, Amdt 1
Altus, OK, Altus Muni, VOR-A, Amdt 4
Altus, OK, Altus Muni, VOR-B, Orig
Myerstown, PA, Decks, VOR/DME-A, Amdt 1

...Effective upon publication

Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt 2
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Orig
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Orig

[FR Doc 94-13442 Filed 6-1-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N-0191]

Food Labeling: Application of Nutrition Labeling, Nutrient Content Claims, and Juice Labeling Requirements to Food Products; Certification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; notice of legislation and of address for submission of certifications.

SUMMARY: The Food and Drug Administration (FDA) is announcing the address to which a person should submit certifications made pursuant to Pub. L. 103-261. The public law extends the time period for compliance with certain provisions of the Food, Drug, and Cosmetic Act (the act) but makes the extension contingent upon the submission of a certification to FDA. This notice is published in response to the passage of Pub. L. 103-261.

DATES: Certifications must be received before June 15, 1994.

ADDRESSES: Certifications should be sent to the Office of Food Labeling (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS-151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION: President Clinton has signed into law Pub. L. 103-261. This law extends the time period for food products to comply with section 403(q) and 403(r)(2) of the act (21 U.S.C. 343(q) and 343(r)(2)), and with the provision of section 403(i) of the act (21 U.S.C. 343(i)) that was added by section 7(2) of the Nutrition Labeling and Education Act (NLEA) (21 U.S.C. 343), until after August 8, 1994. This delay is contingent, however, on the person who introduces the product, or delivers it for introduction, into interstate commerce submitting before June 15, 1994, a certification to the Secretary of Health and Human Services that such person will comply with Pub. L. 103-261 and with section 403(q) and 403(r)(2) of the act, and the provision of section 403(i) of the act referenced above, after August 8, 1994.

All such certifications should be submitted to: Office of Food Labeling (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

The words "NLEA certification" should be placed on the bottom left-hand corner of the envelope containing the certification.

All labels and labeling applied to food after August 8, 1994, must comply with section 403(q) and 403(r)(2) and with the provision of section 403(i) of the act referenced above, as well as the regulations implementing these sections of the act (see 58 FR 44033, August 18, 1993; 58 FR 49190, September 22, 1993; and 59 FR 15049 March 31, 1994).

Dated: May 27, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-13467 Filed 5-27-94; 4:18 pm]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OH44-1-5936; FRL-4890-2]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is deleting all total suspended particulate (TSP) area designations in the State of Ohio. This direct final action was prompted by the Ohio Environmental Protection Agency's request to redesignate all areas in the State, except for Cuyahoga County and a portion of Jefferson County, from TSP nonattainment to attainment. Section 107(d)(4)(B) of the Clean Air Act (CAA) authorizes USEPA to eliminate all area TSP designations once the increments for particulate matter with an aerodynamic diameter less than 10 microns are promulgated. On June 3, 1993 (58 FR 31622), USEPA published the final rulemaking revising the prevention of significant deterioration (PSD) particulate matter increments so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than or equal to 10 microns (respirable particulate matter). The June 3, 1993 final rulemaking also establishes the method by which USEPA deletes such TSP designations. Today's action becomes effective on June 3, 1994, the effective date of the respirable particulate matter increments.

Please note that for this action, the term "respirable particulate matter"

only applies to particulate matter with an aerodynamic diameter less than or equal to 10 microns. "Respirable particulate matter" is not to be confused with particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

EFFECTIVE DATE: This rulemaking will become effective on June 3, 1994.

ADDRESSES: Copies of the State submittal for this action are available for public inspection during normal business hours at the following address: (It is recommended that you telephone Gina Smith at (312) 886–7018 before visiting the Region 5 Office.): U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gina M. Smith, Air Enforcement Branch, Regulation Development Section, (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

Background

In 1971, USEPA promulgated primary and secondary national ambient air quality standards (NAAQS) for particulate matter to be measured as TSP. On July 1, 1987 (52 FR 24634), USEPA revised the NAAQS for particulate matter, replacing the TSP indicator with the respirable particulate matter indicator. The particulate matter standard was revised under the authority of Section 109(d) of the CAA, which requires periodic review and, if appropriate, revision of existing criteria and standards.

In a related rulemaking published in the July 1, 1987, **Federal Register** (52 FR 24672), the Agency determined that the respirable particulate matter standard would be implemented pursuant to section 110 of the CAA. As a result, the area designation process of section 107 and the nonattainment provisions of Part D did not apply to the respirable particulate matter NAAQS. Consequently, TSP designations were retained as a means of differentiating areas needing nonattainment area new source review as opposed to attainment area prevention of significant deterioration review and to provide for attainment area increment tracking.

In the 1990 amendments to the CAA, section 107 established designations of attainment status for respirable particulate matter. In addition, section 107(d)(4)(B) expressly states that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to enactment of the 1990 Amendments shall remain in effect for purposes of implementing the particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose. Section 166(f) authorizes USEPA to replace the TSP increment with respirable particulate matter increments.

Upon enactment of the Clean Air Act Amendments of 1990, Cuyahoga County and a portion of Jefferson County were designated as nonattainment areas for respirable particulate matter. These two areas, as well as seven other areas within the State, had previously been designated TSP nonattainment areas. Cuyahoga County and a portion of Jefferson County will remain designated as nonattainment areas for respirable particulate matter.

On June 3, 1993 (58 FR 31622), USEPA published the final rulemaking revising the particulate matter increments so that they are measured in terms of respirable particulate matter. As a result of the rulemaking, the PSD increments and NAAQS for particulate matter will be measured by the same indicator. The final rulemaking also establishes the method by which USEPA will delete TSP area designations.

As stated at 58 FR 31635, the deletion of TSP area designations for each State will occur at the same time that USEPA (1) approves a State's revised PSD program containing the respirable particulate matter increments, (2) promulgates the PM–10 increments into a State's SIP when the State chooses not to adopt the increments on their own, or (3) approves a State's request for delegation of PSD responsibility under § 52.21(u). For States already having delegated authority to implement the Federal PSD regulations, the rulemaking states that "USEPA will eliminate the TSP designations when the PM–10 increments become effective under § 52.21 on June 3, 1994."

USEPA has delegated to the State of Ohio the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised respirable particulate matter increments once the increment becomes effective. On August 3, 1993 (58 FR 41218), USEPA proposed to approve the State of Ohio's regulations providing for attainment of respirable particulate matter air quality standards in areas that are currently designated nonattainment and unclassifiable for respirable particulate matter.

USEPA interprets section 107(d)(4)(B) of the CAA to allow elimination of all TSP area designations once the respirable particulate matter increments are promulgated. The respirable particulate matter increments will become effective June 3, 1994 and would automatically be delegated for implementation by the State of Ohio. USEPA finds that the promulgation of the respirable particulate matter increments and USEPA's proposed approval of Ohio's respirable particulate matter SIP fulfills the criteria for eliminating TSP area designations altogether.

Although the OEPA requested redesignation of all areas in the State, except Cuyahoga County and Jefferson County, from TSP nonattainment to attainment, USEPA believes that it is administratively more efficient to delete TSP area designations totally since the deletion eliminates the need for two rulemaking proceedings. If USEPA were to redesignate the TSP nonattainment areas at this time, the Agency would then have to promulgate another rulemaking on or after June 3, 1994, when the respirable particulate matter PSD increments become effective.

USEPA is publishing this action without prior proposal because, due to the change from TSP to respirable particulate matter under the particulate matter regulatory scheme, the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 3, 1994 unless, within 30 days of its publication, notice is received that adverse critical comments will be submitted.

If such notice of comments is received, this action will be withdrawn before the effective date by publishing two subsequent notices. A notice would be published withdrawing the final action, and another notice would begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 3, 1994.

Final Action

USEPA is taking action to delete all TSP area designations in the State of Ohio since the Agency believes it is administratively more efficient than redesignating the TSP nonattainment areas, except for Cuyahoga County and a portion of Jefferson County, to attainment. Deletion of the TSP area delegations at this time eliminates the need for two rulemaking proceedings and has the same effect as redesignating TSP nonattainment areas to attainment. Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future

request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this action for conformance with the provisions of the Clean Air Act Amendments of 1990 enacted on November 15, 1990 and determined that this action conforms with the statute as amended. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted the regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's action under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this action. Moreover, USEPA's action does not impose any new Federal requirements. Therefore, USEPA certifies that this action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 1994. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Within § 81.336—Ohio, the table entitled "Ohio-TSP" is removed.

[FR Doc. 94–13329 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–30072K; FRL–4780–1]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.23 percent increase in locality pay for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area in 1994.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Concerning this rule contact: By mail: Ken Wetzel, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 700–F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–5128). Concerning tolerance petitions and individual fees: Jim Tompkins (703–308–8780)

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on March 24, 1993 (58 FR 16094) and became effective on April 23, 1993. At that time the fees were increased 3.7 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of §180.33 and reads in part as follows:

> (o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale***. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay." The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis.

The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/Baltimore, MD pay area. The pay raise in 1994 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 4.23 percent; therefore, the tolerance petition fees are being increased 4.23 percent. The entire fee schedule, §180.33, is presented for

the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of **Subjects in 40 CFR Part 180**

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 23, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $58,550, plus $1,450 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $13,400 plus $900 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $10,800.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $23,400 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,325.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $11,675 plus $900 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,325. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,450 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,450 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,925.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $29,225 to cover the costs of the advisory committee. Further advance deposits of $29,225 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,450 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the

new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 94–13431 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 260

[FRL–4889–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes From Wood Surface Protection; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice contains corrections to the final regulation (FRL–4804–9) which was published Tuesday, January 4, 1994 ("Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Final Rule", 59 FR 458). This notice corrects inaccurate references in that Final Rule to the EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods".

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Kim Kirkland at (202) 260–4761, Office of Solid Waste (Mailcode 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction (January 4, 1994, 59 FR 458) amended the hazardous waste regulations by adding the sodium and potassium salts of pentachlorophenol and tetrachlorophenol to appendix VIII of 40 CFR part 261. The final regulations also amended EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," by adding Method 4010 to the Third Edition of SW–846 as Update IIA. SW–846 contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The Agency added Method 4010 to SW–846 as an appropriate method, in general, for testing for the presence of the sodium and potassium salts of pentachlorophenol and tetrachlorophenol which, as noted above, were added by the final rule to appendix VIII of 40 CFR part 261.

In the final regulation of January 4, 1994 (59 FR 458), the Agency amended 40 CFR 260.11(a) to incorporate by reference both Update IIA (Method 4010) and Update II of SW–846; and to indicate that these updates are available from the U.S. Government Printing Office (GPO). These amendments to 40 CFR 260.11 contain two technical errors: (1) Update II of SW–846 is still being developed by EPA and was not promulgated by the final regulations of January 4, 1994, or by any other regulation to date, and is not available from GPO; and (2) Update IIA (Method 4010), although promulgated by the January 4, 1994 rule, is also not available from the GPO.

Need for Correction

As published, the final regulations of January 4, 1994 were in advertent error with respect to the incorporation by reference of Update II of SW–846, Third Edition, into the hazardous waste regulations at 40 CFR 260.11(a). The regulations were also in inadvertent error with respect to the availability of Updates II and IIA from the U.S. Government Printing Office. These errors, therefore, need correction. Because this action is a technical correction, prior notice and opportunity for comment is unnecessary, and good cause exists for this change to take effect immediately (see 5 U.S.C. 553(6)). Accordingly, the Agency is not seeking any comments based on today's notice.

Correction of Publication

Accordingly, the publication on January 4, 1994 of the final regulation, 59 FR 458, "Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Final Rule" (FRL–4804–9), which was the subject of FR Doc. 93–32032, is corrected. Specifically, on page 468, in the third column, § 260.11(a) is corrected to read as follows:

§ 260.11 References [corrected].

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I and IIA]. The Third Edition of SW–846 and Update I (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238; and Update IIA is available from the Office of Solid Waste (Mailcode 5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460 or by calling the Methods Information Communication Exchange (MICE) Service at (703) 821–4789. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

Dated: May 17, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–13190 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year)

flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Alameda (FEMA Docket No. 7081).	City of San Leandro	December 3, 1993, December 10, 1993, The Daily Review.	The Honorable John Faria, mayor, city of San Leandro, 835 East 14th Street, San Leandro, California 94577.	November 19, 1993.	060013
Hawaii: Maui (FEMA Docket No. 7081).	Unincorporated areas.	December 10, 1993, December 12, 1993, The Maui News.	The Honorable Linda Crockett Lingle, mayor, county of Maui, 200 South High Street, Wailuku Maui, Hawaii 96793.	November 22, 1993.	150003

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 24, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94-13395 Filed 6-1-94; 8:45 am]

BILLING CODE 6718-03-P

44 CFR Part 65

[Docket No. FEMA-7094]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community

where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Arizona: Pima	Unincorporated areas.	March 18, 1994, March 25, 1994, The Daily Territorial.	The Honorable Edwin Moore, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	February 14, 1994.	040073
Arizona: Pima	City of Tucson	March 18, 1994, March 25, 1994, The Daily Territorial.	The Honorable George Miller, mayor, city of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	February 14, 1994.	040076
Arizona: Santa Cruz	City of Nogales	May 5, 1994, May 12, 1994, Nogales Daily Herald.	The Honorable Jose Canchola, mayor, city of Nogales, 777 North Grand Avenue, Nogales, Arizona 85621.	March 17, 1994.	040091
California: Riverside	City of Temecula	April 22, 1994, April 29, 1994, The Californian.	The Honorable Ron Roberts, mayor, city of Temecula, 43174 Business Park Drive, Temecula, California 92590.	March 29, 1994.	060742
California: Solano	City of Vacaville	June 23, 1994, June 30, 1994, Vacaville Reporter.	The Honorable David Fleming, mayor, city of Vacaville, City Hall, 650 Merchant Street, Vacaville, California 95688.	March 11, 1994.	060373
Colorado: Adams	City of Aurora	May 25, 1994, June 1, 1994, The Aurora Sentinel.	The Honorable Paul Tauer, mayor, city of Aurora, 1470 South Havana Street, 8th Floor, Aurora, Colorado 80012–4090.	March 21, 1994.	080002
Colorado: Denver	City and county of Denver.	April 19, 1994, April 26, 1994, Daily Journal.	The Honorable Wellington E. Webb, mayor, city and county of Denver, 1437 Banock Street, room 350, Denver, Colorado 80202.	April 8, 1994	080046
Texas: Dallas, Denton, and Collin.	City of Carrollton	April 14, 1994, April 21, 1994, Metrocrest News.	The Honorable Milburn Gravley, mayor, city of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	March 24, 1994.	480167
Texas: Dallas	City of Dallas	March 24, 1994, March 31, 1994, The Dallas Morning News.	The Honorable Steve Bartlett, mayor, city of Dallas, City Hall SE North, 1500 Madrilla, Dallas, Texas 75201.	March 1, 1994.	480171
Texas: Fort Bend	Unincorporated areas.	March 16, 1994, March 23, 1994, Fort Bend Star.	The Honorable Roy Cordes, Jr., Fort Bend County Judge, 309 South Fourth Street, Richmond, Texas 77469.	February 24, 1994.	480228

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Texas: Collin	City of Frisco	March 24, 1994, March 31, 1994, Frisco Enterprise.	The Honorable Robert Warren, mayor, city of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	January 7, 1994.	480134
Texas: Tarrant	City of North Richland Hills.	March 3, 1994, March 10, 1994, The Mid-Cities News.	The Honorable Tommy Brown, mayor, city of North Richland Hills, 7301 North East Loop 820, North Richland Hills, Texas 76180.	January 18, 1994.	480607
Texas: Parker	Unincorporated areas.	March 24, 1994, March 31, 1994, The Weatherford Democrat.	The Honorable Ben Long, Parker County Judge, P.O. Box 819, Weatherford, Texas 76086.	March 2, 1994.	480520
Texas: Collin	City of Plano	March 4, 1994, March 11, 1994, The Dallas Morning News.	The Honorable James N. Muns, mayor, city of Plano, P.O. Box 860358, Plano, Texas 75986–0358.	February 16, 1994.	480140
Texas: Bexar	City of San Antonio	March 18, 1994, March 25, 1994, San Antonio Express News.	The Honorable Nelson W. Wolff, mayor, city of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	February 2, 1994.	480045
Texas: Fort Bend	City of Stafford	March 16, 1994, March 23, 1994, Fort Bend Star.	The Honorable Leonard Scarcella, mayor, city of Stafford, 2610 South Main, Stafford, Texas 77477.	February 24, 1994.	480233
Texas: Smith County	City of Tyler	March 8, 1994, March 25, 1994, The Tyler Morning Telegram.	The Honorable Smith T. Reynolds, Jr., mayor, city of Tyler, P.O. Box 2039, Tyler, Texas 75710.	February 24, 1994.	480571
Texas: Parker	City of Weatherford	March 24, 1994, March 31, 1994, The Weather-ford Democrat.	The Honorable Sherri Watson, mayor, city of Weatherford, P.O. Box 255, Weatherford, Texas 76086.	March 2, 1994.	480522

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 24, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–13396 Filed 6–1–94; 8:45 am]

BILLING CODE 6718–03–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1609, 1615, 1632, 1642, 1646, and 1652

RIN 3206–AE67

Federal Employees Health Benefits Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: On March 30, 1994, the Office of Personnel Management (OPM) published a final rule that amended certain provisions of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The regulations were effective immediately upon publication and OPM intended that they would apply for the first time to the 1995 FEHB contract (rate) year. Upon publication, we found two references in the Supplementary Information Section with regard to the effective date that we believe will be confusing to FEHB carriers. We are publishing the following corrections to clarify our intent and eliminate the ambiguity.

In the **SUPPLEMENTARY INFORMATION** section beginning on 59 FR 14761, in the issue of Wednesday, March 30, 1994, make the following corrections:

(1) On page 14762, in the 2nd column, the first full paragraph, in the fifth line, "1994" should read "1995."

(2) On page 14763, in the lst column, the first full paragraph, last sentence should read, "These regulations will be in effect beginning with the 1995 rate year."

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–13320 Filed 6–1–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 178 and 179

[Docket No. HM–166Z; Amdt. Nos. 171–125, 172–134, 173–237, 174–76, 178–102, 179–48]

RIN 2137–AC46

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the Hazardous Materials Regulations (HMR) a number of changes based on rulemaking petitions from industry and RSPA initiative. These changes are necessary to recognize recent editions of certain matter incorporated by reference, to eliminate certain inconsistencies and typographical errors, and to reinstate a shipping description. The intended effect of these regulatory changes is to improve clarity and, consequently, reduce confusion.

DATES: Effective: July 5, 1994.

Compliance date: Compliance with the regulations, as amended herein, is authorized immediately.

Incorporation by reference: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This final rule makes changes to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) based on either requests from industry or agency initiative. These changes clarify and correct certain inconsistencies appearing in the HMR, add a specific shipping description currently authorized by approval, and update certain standards incorporated by reference under § 171.7. These changes impose no new requirements on persons subject to the HMR and do not adversely affect safety.

The following is a discussion of the changes made under this final rule.

Section 171.7

RSPA received several requests to update various standards currently incorporated by reference in the table contained in § 171.7(a)(3). These standards are as follows:

The Oak Ridge Institute for Science and Education requested RSPA to incorporate into the HMR the latest American National Standards Institute, Inc. (ANSI) pamphlet, ANSI N14.1–1990, entitled "Uranium Hexafluoride—Packaging for Transport." Incorporating the 1990 edition of the standard into the HMR will enhance uranium hexafluoride transportation safety by recognizing the use of packagings fabricated to certain updated industrial specifications and standards. The 1990 standard also contains specific information on the reuse of valves and various editorial clarifications. Section 173.420 of the HMR permits uranium hexafluoride to be transported in packagings designed, fabricated, inspected, tested and marked in accordance with certain DOT and industry standards that include packagings fabricated to the ANSI N14.1 (1987, 1982, or 1971 edition) in effect at the time the packaging was manufactured. This section also provides that, before initial filling and during periodic inspection and test, the packagings must be cleaned in accordance with the ANSI N14.1 requirements.

The American Pyrotechnic Association (APA) petitioned (P–1174) to update APA Standard 87–1, entitled "Standard for Construction and Approval for Transportation of Fireworks and Novelties," from the September 1987 edition to the April 1993 edition. APA Standard 87–1 contains procedures for construction and approval for transportation of new fireworks and novelty items. In the revised standard, the shipping descriptions, hazard classes, and section references are consistent with the current HMR. The revised standard also has been expanded to offer guidance on conducting the fireworks stability test, and to address packaging requirements, EX-number markings, and transitional provisions.

The Association of American Railroads (AAR) petitioned (P–1193) to update "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M–1002," from the 1988 edition to the September 1, 1992 edition. The revised AAR publication contains updated discussions of matters such as repair of cracks, weld overlay, inspection of rubber-lined tank cars, and the renewal of approvals for valves and fittings.

The Compressed Gas Association (CGA) petitioned (P–1196) to update CGA Pamphlet C–7, entitled "A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A," from the April 15, 1983 edition to the 1992 (sixth) edition. In the 1992 edition, revisions have been made to the shipping descriptions for consistency with the current HMR.

The Institute of Makers of Explosives (IME) petitioned (P–1171) to update IME Safety Library Publication 22 (IME Standard 22) entitled "Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials," from the January 1, 1985 edition to the May 1993 edition. This standard contains information relative to the use and construction of IME–22 containers or compartments for the transport of certain detonators. Section 173.63 authorizes the use of these containers and compartments for packaging detonators and § 177.835(g) authorizes the transportation of these packages on the same transport vehicle with other explosives. The IME standard is used extensively by safety personnel in the commercial explosives industry for training purposes and by users of explosives. In the revised standard, the shipping descriptions, hazard classes, and section references have been revised for consistency with recent changes to the HMR.

RSPA has reviewed these updated standards. RSPA found no provisions that would impose additional requirements and agrees that they should be incorporated by reference.

With regard to the AAR standards referenced in § 171.7, the table contains separate entries for "AAR Specification for Tank Cars, Specification M–1002, 1988" and "AAR Specification for Tank Cars, Specification M–1002, Section C—Part III, September 1988," which are the same standard. The first entry is removed, and the second entry is revised to clarify that this standard is contained in the AAR Manual of Standards of Recommended Practices. These changes were proposed under a separate rulemaking action [Docket HM–197; May 7, 1993; 58 FR 27257] and were supported by commenters. They are merely finalized under this docket.

Sections 172.101 and 172.102

IME and several explosives companies jointly petitioned (P–1143) to amend the Hazardous Materials Table (the Table) in § 172.101 to reinstate an entry for "Ammonium nitrate fertilizer, UN2067." This shipping description was one of six entries for ammonium nitrate fertilizers removed from the Table under a revised final rule issued December 20, 1991 [Docket HM–181; 56 FR 66124]. Although these descriptions are contained in the United Nations' Recommendations on the Transport of Dangerous Goods (UN Recommendations), they were removed because RSPA found them confusing and difficult to use. However, petitioners assert that this shipping description, "Ammonium nitrate fertilizer, UN2067," has been used widely for many years and the domestic industry has relied upon the "Definition and Test Procedures for Ammonium Nitrate Fertilizer," published by The Fertilizer Institute, to ensure the stability of their material. Petitioners stated that their vehicle placards, shipping papers, and industry training procedures, including emergency response training, rely on the identification number "2067." They asserted that it would be a questionable expenditure of time and money for them to convert their placards, documents and training procedures to show a different identification number. RSPA agrees with the petitioners that adequate justification exists for reauthorizing the description "Ammonium nitrate fertilizer, UN2067." RSPA issued an approval (CA 93–10006) authorizing use of the description "Ammonium nitrate fertilizer, UN2067" not meeting Class 1 (explosive) criteria. Therefore, in this final rule, "Ammonium nitrate fertilizer, 5.1, UN2067, III" is added to the Table, subject to Special Provision 23. RSPA is also adding Special Provision 23 in § 172.102(c)(1) stipulating that material shipped or transported under this description may not meet Class 1 (explosive) criteria.

Amalgamet Canada petitioned (P–1171) to amend the entry "Titanium Tetrachloride" in the Table by removing Special Provision N41, which does not allow any packaging material to be made of metal construction. RSPA agrees that removal of N41 would eliminate an inconsistency with Special Provisions B32 and T45, which allow the use of certain containers made of stainless steel.

RSPA is amending Special Provision B13 to extend the September 1, 1993 date for construction of cargo tanks that are equivalent to MC 306 cargo tank specifications until August 31, 1995. This change is consistent with a final rule authorizing the continued construction of MC 306 cargo tanks until August 31, 1995 [Docket HM–183, January 12, 1994; 59 FR 1784].

Section 173.34

Paragraph (e)(15)(i) was revised under Docket HM–166X [58 FR 50496; September 27, 1993] to allow DOT 3A and 3AA cylinders over 35 years old to be retested every 10 years rather than every five years, provided they were manufactured after December 31, 1945. However, § 173.34(e)(15)(v) continues to allow only cylinders less then 35 years old to be stamped with a five-point star showing that these cylinders may be tested every 10 years. Therefore, in this final rule, § 173.34(e)(15)(v) is revised, for consistency with paragraph (e)(15)(i), to permit cylinders manufactured after December 31, 1945, to be stamped with a five-point star. Also, because cylinders manufactured on or before December 31, 1945, do not qualify for a ten-year retest period under these provisions, the wording of paragraph (e)(15)(i) has been simplified.

Paragraph (e)(17) requires DOT 8 and 8AL acetylene cylinders to be requalified, on a phase-in basis, in accordance with CGA Pamphlet C–13. Because many acetylene cylinder owners voluntarily complied with CGA Pamphlet C–13 prior to issuance of the final rule, RSPA granted an exception, in paragraph (e)(17)(ii), for all cylinders requalified and marked in accordance with the CGA pamphlet before January 15, 1993. The time required for RSPA to implement the registration procedures for acetylene cylinder retesters resulted in a backlog of requests. To alleviate unnecessary burdens to industry, RSPA has allowed retesters to continue requalifying and marking the cylinders in accordance with CGA Pamphlet C–13. Accordingly, the date in paragraph (e)(17)(ii) is revised to reflect an extension to October 1, 1994.

Section 173.225

In paragraph (b), in Note 9 following the "Organic Peroxides Table," the reference to "§ 173.225(e)(3)(v)" is corrected to read "§ 173.225(e)(3)(ii)."

Section 173.247

In revisions to a final rule concerning the transport of elevated temperature materials [Docket HM–198A; 58 FR 3344; January 8, 1993], RSPA revised the bulk packaging requirements for the transport of asphalt by highway in § 173.247. In paragraph (g)(1)(iii)(B), to ensure that a reclosing pressure relief device is not rendered inoperable by viscous lading, RSPA allowed an opening with a maximum three-inch nominal pipe diameter. The maximum effective area of the opening was incorrectly given as 46 cm^2 (7.1 in^2). The correct maximum effective area is 48 cm^2 (7.4 in^2). This final rule corrects this error.

Sections 173.302 and 173.304

Sections 173.302(h) and 173.304(g) provide that mixtures meeting Division 2.3, Hazard Zone A, must conform to § 173.40. These provisions are revised to clarify that § 173.40 applies to a pure gas, as well as a gas mixture, meeting Division 2.3, Hazard A.

Section 173.306

In a final rule published on December 20, 1991 [Docket HM–181; 56 FR 66124], RSPA revised the limited quantity provisions in § 173.306(b)(3) to include Division 6.1 Packing Group III materials. Through an oversight, a similar revision was not made to the aerosol provisions contained in paragraph (a)(3). Therefore, in this final rule, RSPA is amending paragraph (a)(3) by adding the phrase "(other than a Division 6.1 Packing Group III material)."

Section 173.420

In paragraph (a)(2)(i), the 1990 revision of ANSI N14.1 is added to the earlier editions of ANSI N14.1 cited in this paragraph. Also, in paragraph (b), the reference to ANSI Standard N14.1–1987 is updated to 1990. These changes are made for consistency with the incorporation by reference of the 1990 edition of this standard under this final rule.

Section 174.25

The example provided in paragraph (c) is revised by adding the wording "PG II" to reflect a complete basic description, as stated in the sentence preceding the example.

Section 178.503

The 17th Session of the UN Committee of Experts on the Transportation of Dangerous Goods adopted amendments for incorporation in the eighth revised edition of the UN Recommendations. One amendment provides that UN markings on certain steel drums must include the thickness of the packaging material to the nearest tenth of a millimeter; however, the amendment does not require the marking to contain a unit of measurement (i.e., "mm"). Section 178.503(a)(9) states that the marking must include the "mm" abbreviation for millimeters as part of the thickness marking for metal and plastic drums and jerricans intended for reuse or reconditioning as single packagings or the outer packagings of composite packagings. For consistency with the eighth revised edition of the UN Recommendations, paragraph (a)(9) is revised to clarify that the marked thicknesses must be shown to the nearest tenth of a millimeter and to reflect that the "mm" abbreviation is not required. Recognizing that some manufacturers may choose to include the "mm" abbreviation or may already be including the "mm" in drums markings, the provision allows marking of the "mm" symbol on a permissive basis. Corresponding minor editorial changes are made to the UN marking examples shown in paragraphs (d)(2)(ii) and (d)(3).

Section 178.505

In § 178.505, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.506

In § 178.506, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.509

In § 178.509, a typographical error is corrected in the last sentence of paragraph (b)(4) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.511

In § 178.511, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.601

In § 178.601, a typographical error is corrected in the first sentence of paragraph (g)(7) by changing the reference from "§ 178.601 (g)(1) and (g)(2)" to "§ 178.601 (g)(1) through (g)(6)."

Section 178.605

In § 178.605, a typographical error is corrected in the last sentence of paragraph (b) by changing the reference from the "Associate Administrator of Hazardous Materials Safety" to

"Associate Administrator for Hazardous Materials Safety."

Section 178.606

In § 178.606, a typographical error is corrected in the third sentence of paragraph (b) by changing the reference from the "Associate Administrator of Hazardous Materials Safety" to "Associate Administrator for Hazardous Materials Safety."

Section 179.105–7

In § 179.105–7, in paragraph (b), the reference to the 1976 edition of the AAR Specifications for Tank Cars is updated to reference the September 1, 1992 edition.

This final rule will facilitate compliance with the HMR by correcting errors, clarifying provisions and updating obsolete matter incorporated by reference. All of the changes are noncontroversial. With regard to matter incorporated by reference, there is a need to update IME Standard 22 as quickly as possible to avoid misunderstandings that can adversely affect the safe transportation of detonators. Other provisions of this rule provide minor relief from regulatory provisions which will have an immediate benefit to the affected entities. For these reasons, RSPA has determined that public notice and comment procedures, prior to adoption of this final rule, are not required under the Administrative Procedure Act (5 U.S.C. 551 *et seq.).*

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The impacts of the changes are so minimal that a regulatory evaluation is unnecessary.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under 49 App. U.S.C. 1804(a)(4), concerning certain covered subjects, or 49 App. U.S.C. 1804(b), concerning highway routing. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This rule concerns the description and handling of hazardous materials. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is October 1, 1994. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule relaxes certain provisions that apply to hazardous materials shippers, carriers and packaging manufacturers, some of whom are small entities. This final rule should result in minor cost savings to affected entities. It also reduces confusion by incorporating by reference the latest editions of certain standards that have been revised for consistency with the current HMR.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packagings and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, chapter I, subchapter C of the Code of Federal Regulations, is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815 and 1818; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under "American National Standards Institute, Inc.," in column 1, the entry "ANSI N14.1 Standard for Packaging of Uranium Hexafluoride for Transport, 1971, 1982 and 1987 Editions." is revised to read "ANSI

N14.1 Standard for Packaging of Uranium Hexafluoride for Transport, 1971, 1982, 1987 and 1990 Editions.".

b. Under "American Pyrotechnics Association (APA)," in column 1, the entry "APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks and Novelties, September 1987 Edition." is revised to read "APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks and Novelties, April 1993 Edition.".

c. Under "Association of American Railroads," in column 1, the entry "AAR Specification for Tank Cars, Specification M–1002, 1988" is removed and, in Column 2, the entry "173.31; 179.100" is removed.

d. Under "Association of American Railroads," in column 1, the entry "AAR Specification for Tank Cars, Specification M–1002, Section C—Part III, September 1988" is removed and the entry "179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400" is removed from column 2.

e. Under "Association of American Railroads," the entry "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M–1002, September, 1992. . . . . .173.31; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400" is added.

f. Under "Compressed Gas Association, Inc," in column 1, the entry "CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A, issued April 15, 1983." is revised to read "CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A, issued 1992 (6th Edition).".

g. Under "Institute of Makers of Explosives," in column 1, the entry "IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, January 1, 1985." is revised to read "IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, May 1993.".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

4. In § 172.101, in the Hazardous Materials Table, the following entries are revised or added in appropriate alphabetical sequence:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[ADD].												
	Ammonium nitrate fertilizers: uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90% ammonium nitrate and not more than 0.2% combustible material (including organic material calculated as carbon), or with more than 70% but less than 90% ammonium nitrate and not more than 0.4% total combustible material.	5.1	UN2067	III	Oxidizer	23	152	213	240	25 kg	100 kg	B	48, 59, 60, 117.
	[REVISE].												
	Titanium tetrachloride	8	UN1838	II	Corrosive, poison.	2, A3, A6, B7, B9, B14, B32, B41, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30L	C	8, 40.

5. In § 172.102, in paragraph (c)(1), Special Provision 23 is added to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

23 Ammonium nitrate fertilizer may not meet the definition and criteria of Class 1 (explosive) material (see § 173.50 of this subchapter).

* * * * *

§ 172.102 [Amended]

6. In addition, in § 172.102, in paragraph (c)(3), Special Provision B13 is amended in the introductory text by removing the wording "September 1, 1993" and adding in its place, the wording "August 31, 1995".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

8. In § 173.34, paragraph (e)(15)(i) and the first sentence in paragraph (e)(15)(v), are revised to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(e) * * *

(15) * * *

(i) The cylinder was manufactured after December 31, 1945.

* * * * *

(v) Each cylinder is stamped with a five-point star at least one-fourth of an inch high following the test date. * * *

* * * * *

9. In addition, in § 173.34, the first sentence in paragraph (e)(17)(ii), the date "January 15, 1993" is revised to read "October 1, 1994".

§ 173.225 [Amended]

10. In § 173.225, in paragraph (b), in Note 9 following the "Organic Peroxides Table," the reference "173.225(e)(3)(v)" is revised to read "173.225(e)(3)(ii)".

11. In § 173.247, paragraph (g)(1)(iii)(B) is revised to read as follows:

§ 173.247 Bulk packaging for certain elevated temperature materials (Class 9) and certain flammable elevated temperature materials (Class 3).

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) For transportation of asphalt by highway, a safety relief device incorporating a frangible disc or a permanent opening, each having a maximum effective area of 48 cm^2 (7.4 in^2); or

* * * * *

§ 173.302 [Amended]

12. In § 173.302, in paragraph (h), the wording "poison gases and poison gas" is added immediately after "containing" and before "mixtures".

§ 173.304 [Amended]

13. In § 173.304, in paragraph (g), the wording "poison gases and poison gas" is added immediately after "containing" and before "mixtures".

§ 173.306 [Amended]

14. In § 173.306, paragraph (a)(3) introductory text is amended by adding the phrase "(other than a Division 6.1 Packing Group III material)" between the words "nonpoisonous" and "liquid" in the first sentence.

§ 173.420 [Amended]

15. In § 173.420, the following changes are made:

a. In paragraph (a)(2)(i), the year "1990," is added before the wording "1987, 1982 or 1971" within the parentheses.

b. In paragraph (b) "American National Standard N14.1–1987" is revised to read "American National Standard N14.1–1990".

PART 174—CARRIAGE BY RAIL

15a. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

§ 174.25 [Amended]

16. In § 174.25, paragraph (c), in the penultimate sentence, the wording "UN 1255" in the example is revised to read "UN 1255, PG II".

PART 178—SPECIFICATIONS FOR PACKAGINGS

17. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

18. In § 178.503, paragraph (a)(9) is revised to read as follows:

§ 178.503 Marking of packagings.

(a) * * *

(9) For metal or plastic drums or jerricans intended for reuse or reconditioning as single packagings or the outer packagings of a composite packaging intended for reuse or reconditioning, the minimum thickness of the packaging material expressed in millimeters. Thicknesses must be marked to the nearest tenth of a millimeter. The thickness expressed in millimeters may be indicated by the abbreviation "mm". Where a drum is constructed with different head and body thicknesses, the different thicknesses may be marked (e.g., "1.2–1.0" for drums having different head and body thicknesses, and "0.8–1.0–1.2" for drums having different top head, body and bottom head thicknesses, respectively); and

* * * * *

§ 178.503 [Amended]

19. In addition, in § 178.503, in the examples shown in paragraphs (d)(2)(ii) and (d)(3), the illustrations are revised to read as follows:

§ 178.503 Marking of packagings.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

BILLING CODE 4910–60–M

* * * * *

(3) * * *

BILLING CODE 4910-60-C

* * * * *

§ 178.505 [Amended]

20. In § 178.505, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.506 [Amended]

21. In § 178.506, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.509 [Amended]

22. In § 178.509, in the last sentence of paragraph (b)(4) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.511 [Amended]

23. In § 178.511, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.601 [Amended]

24. In § 178.601, in the first sentence of paragraph (g)(7) the reference "§ 178.601(g)(1) and (g)(2)" is revised to read "§ 178.601(g)(1) through (g)(6)".

§ 178.605 [Amended]

25. In 178.605, in the last sentence of paragraph (b) the reference to the "Associate Administrator of Hazardous Materials Safety" is revised to read "Associate Administrator for Hazardous Materials Safety".

§ 178.606 [Amended]

26. In 178.606, in the third sentence of paragraph (b) the reference to the "Associate Administrator of Hazardous Materials Safety" is revised to read "Associate Administrator for Hazardous Materials Safety".

PART 179—SPECIFICATIONS FOR TANK CARS

27. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.105-7 [Amended]

28. In § 179.105-7, in paragraph (b) the wording "1976 edition" is revised to read "September 1, 1992 edition".

Issued in Washington, DC on May 24, 1994, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 94-13138 Filed 6-1-94; 8:45 am]

BILLING CODE 4910-60-6

Proposed Rules

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance notice of proposed rule making.

SUMMARY: The Foreign Agricultural Service of the Department of Agriculture is considering making certain technical changes to the Import Regulation for dairy products. The Department is also making certain changes which will enable the Department to implement the commitments undertaken by the United States under the Uruguay Round of Multilateral Trade Negotiations, and forthcoming implementing legislation.

DATES: In order to assure consideration of your views and comments, interested persons are invited to submit written comments regarding proposed changes on or before August 1, 1994.

ADDRESSES: Mail comments to Dairy Import Quota Manager, Import Licensing Group, Import Policies and Trade Analysis Division, room 5531–S, Department of Agriculture, Washington, DC 20250. All written comments received in response to this advance notice will be available for public inspection in room 5531, South Building, 14th and Independence Avenue SW., Washington, DC between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, room 5541 South Building, Department of Agriculture, Washington, DC 20250, phone (202–720–1342).

SUPPLEMENTARY INFORMATION: Regulations, known as the Import Regulations, promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy products which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy products covered by the Import Regulation may only be entered into the United States by or for the account of a person or firm to whom such license has been issued and only in accordance with the terms and conditions of such license, the Import Regulation, and the Harmonized Tariff Schedule of the United States.

Import licenses are issued on a calendar year basis and each license authorizes the license holder to import a specified quantity and type of dairy product from a specified country. The utilization of licenses by the license holders, and entries made under such licenses are carefully monitored by the Department of Agriculture and the U.S. Customs Service.

Rule changes of a technical nature being considered by the Department include modifications, revisions, and updating with respect to: Definitions; eligibility requirements; transfer of eligibility; allocation of annual quotas and issuance of licenses; issuance of ex-quota permits; sales-in-transit; records and inspection; and suspension and revocation procedures.

On April 15, 1994, the United States concluded the Uruguay Round of Multilateral Trade Negotiations and entered into agreements which provide for increased market access opportunities for most products, including dairy products. The Uruguay Round Agreement on Agriculture necessitates the development of new rules to implement commitments undertaken including those pertaining to: Tariffication and modification of existing import quotas to permit additional entry of dairy products; consolidation of certain existing dairy quota products as provided for in the Agreement; and methods of administering and allocating the new tariff-rate quota system.

Interested persons are encouraged to submit their comments, views, and suggestions on forthcoming proposed changes as well as any other comments that they may feel appropriate.

Signed at Washington, DC, on April 28, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–13362 Filed 6–1–94; 8:45 am]
BILLING CODE 3410–10–M

Rural Electrification Administration

7 CFR Part 1710

Credit Support of Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) is considering revising its policies regarding credit support required in connection with loans to power supply borrowers (G&T's) and is hereby soliciting comments from interested parties on issues relating to credit support.

DATES: Written comments and recommendations must be received by REA by July 18, 1994.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Electrification Administration, room 2234, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection in room 2234–S (address as above) during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, room 2234–S, at the above address. Telephone: (202) 720–0736.

SUPPLEMENTARY INFORMATION:

Background

REA-financed cooperatives are generally organized on a two-tier system with power supply borrowers providing wholesale service to their member/owners, the distribution cooperatives. The power supply borrower owns or controls generation and bulk transmission facilities. The distribution members own the facilities necessary to

serve consumers on the retail level. Taken together, a power supply borrower and its distribution members are essentially one economic unit, similar to a typical investor-owned utility which owns or controls both the sources of production and the retail franchises. This unity of ownership and interest between the power supply cooperative and its owners has made possible a highly efficient capitalization structure uniquely suited to the needs of REA's constituency.

Distribution cooperatives entered into long term contracts to purchase all their power requirements from the power supply cooperative at the rates necessary to cover all the power supplier's costs, including debt service on its loans. These contracts, together with all other assets of the power supply cooperative, are pledged as security for billions of dollars of loans to the power supply cooperatives by the Government and private sector alike. The Government and other lenders have generally not required power suppliers to develop and maintain equity. As a result, consumers benefitted from lower electric rates.

While, in most cases, REA credit support requirements currently include the long term, all-requirements wholesale power contract and the first lien on all property including after acquired property, in several instances REA has required additional credit support in the form of guarantees from the G&T's members.

REA is undertaking to review the requirement for credit support in connection with G&T loans and loan guarantees. REA will be taking into consideration the G&T profile and the projects undertaken by the G&T. This profile includes some of the following characteristics: 100% debt financing from REA; equity considerations; and complex issues concerning their wholesale power contract agreements. REA financing of G&T projects generally consists of primarily guarantees of FFB loans and lien accommodations.

I. Credit Support Considerations

REA is requesting input on all factors that impact on the feasibility and risks associated with the borrower and the project to be financed. Factors to be considered may include the following:

a. The regulatory climate (degree of regulation, regulatory body policies);

b. Economics of the service territory (consumer growth trends, consumer load diversity, revenue by consumer class),;

c. The power supply borrowers' current and future electric resource arrangement (capacity, fuel agreements, purchased power, generation statistics);

d. Construction and operating risk of the proposed facility;

e. Quality of management (strategic planning, consumer relations, experience, depth, capability, credibility, response to changing environment);

f. Whether the borrower is operating under a debt restructure agreement with REA

g. Impact on distribution member cooperative rates; and

h. Rate competitiveness;

i Territorial integrity.

j. Diversification activity and/or plans:

k. Analysis of accounting practices vs. industry practices.

Comments are specifically requested on what factors should be considered, how the factors should be weighted, i.e. the ranking criteria, and on when REA should generally not require additional credit support.

REA anticipates reserving the right to require credit support on any loan or loan guarantee it deems necessary.

II. Types of Support

REA is also requesting input on the forms of credit support REA should require under those circumstances where additional credit support is required. Respondents should consider, among others, in addition to the lien on wholesale power contracts and all system assets, the following types of support:

a. G&T member guarantees of loans made to a G&T;

b. Guarantees by financial institutions of G&T loans in lieu of member guarantees; and

c. Letters of Credit obtained by members in lieu of a guarantee.

REA is also requesting comments and suggestions on the terms and conditions that would attach to such credit support. Comments are specifically requested on the concepts of joint and several liability of guarantors, liability caps, pro rata sharing of liability, acceleration of the support obligations under certain circumstances, collateralization, term, and termination.

Authority: 7 U.S.C. 901–950(b); Public Law 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary of Small Community and Rural Development, 7 CFR 2.72.

Dated: May 26, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13402 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF02

List of Approved Spent Fuel Storage Casks: Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Standardized NUHOMS Horizontal Modular Storage System to the List of Approved Spent Fuel Storage Casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in this approved cask under a general license.

DATES: Submit comments by August 16, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of the comments received and the environmental assessment and finding of no significant impact can be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of these documents can be obtained from Mr. G. E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803.

FOR FURTHER INFORMATION CONTACT: Mr. G. E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803; or Mr K. C. Leu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2685.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) directs that, "[T]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of

establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the NRC." Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks, publishing a final rule on 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181). This rule also established a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The 1990 rulemaking listed four casks in § 72.214 of subpart K as approved by the NRC for storage of spent fuel at power reactor sites under general license by persons authorized to possess or operate nuclear power reactors. Since then, two more casks have been listed in § 72.214, one on April 7, 1993 (58 FR 17948) and another on October 5, 1993 (58 FR 51762).

Discussion

This proposed rulemaking would add the Standardized NUHOMS Horizontal Modular Storage System to the list of NRC approved casks for spent fuel storage in § 72.214. Following the procedures specified in § 72.230 of Subpart L, VECTRA Technologies, Inc. (formerly Pacific Nuclear Fuel Services, Inc. (PNFSI)) [1] submitted an application for NRC approval, together with a "Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel" (SAR), NUH–003, Revision 2, dated November 1993. The NRC evaluated VECTRA's submittal and issued a draft Safety Evaluation Report (SER) on VECTRA'S SAR and a draft certificate of compliance for the Standardized NUHOMS Horizontal Modular Storage System. On January 24, 1994, Pacific Nuclear Systems, Inc., (parent company of PNSFI) changed its name to VECTRA Technologies, Inc., after it acquired ABB Impell Corporation.

The NRC is proposing to approve VECTRA's Standardized NUHOMS Modular Storage System for Irradiated Nuclear Fuel, for storage of spent fuel under the conditions specified in the draft certificate of compliance. This cask, when used in accordance with the conditions specified in the certificate of compliance and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health and safety would be ensured. This cask is being proposed for listing under § 72.214, "List of Approved Spent Fuel Storage Casks" to allow holders of power reactor operating licensees to store spent fuel in this cask under a general license. The certificate of compliance would terminate 20 years after the effective date of the final rule listing the cask in § 72.214, unless the cask's certificate of compliance is renewed. The certificate contains conditions for use which are similar to those for other NRC approved casks, however, the certificate of compliance for each cask may differ in some specifics—such as, certificate number, operating procedures, training exercises, spent fuel specification. The draft certificate of compliance for the Standardized NUHOMS cask and the underlying draft SER, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed certificate of compliance may be obtained from Mr. K. C. Leu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2685.

Submission of Comments in Electronic Format

In addition to the original paper copy, commenters are encouraged to submit a copy of the letter in electronic format on IBM PC-compatible 5.25- or 3.5-inch computer diskette. Data files should be provided in one of the following formats: WordPerfect, IBM Document Content Architecture/Revisable-Form-Text (DCA/RFT), or unformatted ASCII text.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not change safety requirements and would not have significant environmental impacts. The proposed rule would add one cask known as the Standardized NUHOMS Modular Storage System to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. G. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3803.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use these casks if (1) they notify the NRC in advance, (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and (3) the conditions of the general license are met. In that rulemaking, four spent fuel storage casks were approved for use at reactor sites, and were listed in 10 CFR 72.214. That rulemaking envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR 72.230. Subsequently, two additional casks were added to the listing in § 72.214 in 1993.

The alternative to this proposed action is to withhold certification of this new design and give a site-specific license to each utility that proposed to use the cask. This alternative however, would cost the NRC more time and money for each site-specific review. In addition, withholding certification

[1] On January 24, 1994, Pacific Nuclear Systems, Inc., (parent company of PNFSI) changed its name to VECTRA Technologies Inc.

would ignore the procedures and criteria currently in place for the addition of new cask designs. Further, it is in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive in that it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rulemaking would eliminate the above problems. Further, the proposed rule will have no adverse effect on the public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs which can be used under a general license. However, the newer cask design may have a market advantage over the existing designs in that power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in § 72.214 benefit by having to obtain NRC certificates only once for a design which can then be used by more than one power reactor licensee. Vendors with cask designs already listed may be adversely impacted in that power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for farther site-specific approval by NRC.

This proposed rulemaking has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants and cask vendors. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule, and thus, a backfit analysis is not required for this proposed rule because this amendment does not involve any provisions which would impose backfits as defined in the backfit rule.

List of Subjects In 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 1068(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145 (g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

In § 72.214, Certificate of Compliance 1004 is added to read as follows:

§ 72.214. List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
SAR Submitted by: VECTRA Technologies, Inc.
SAR Title: Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2
Docket Number: 72–1004
Certification Expiration Date: (20 years after final rule effective date)
Model Numbers: NUHOMS–24P for Pressurized Water Reactor fuel; NUHOMS–52B for Boiling Water Reactor fuel.

* * * * *

Dated at Rockville, Maryland, this 12th day of May 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–13385 Filed 6–1–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–11]

Proposed Amendment of Class E Airspace; Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Nashville International Airport, Tennessee. Runways 2C and 20C have been extended. The Class E airspace extending upward from 700 feet above the surface is proposed to be extended from a 10-mile radius to a 15-mile radius of the Nashville International Airport to contain IFR operations within controlled airspace for these runways.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal

Aviation Administration, Docket No. 94–ASO–11, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337;telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, JR., Airspace Section, Systems Management Branch, Air Traffic Division, Federal-Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–11." The postcard will be date/time stamped and returned to the commenter. All Communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Systems Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular no. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Nashville International Airport, Tennessee. Runways 2C and 20C have been extended. The Class E airspace extending upward from 700 feet above the surface is proposed to be extended from a 10-mile radius to a 15-mile radius of the Nashville internationai Airport to contain IFR operations within controlled airspace for these runways. The coordinates for this airspace docket are based on North American Datum 83. Designations of Class E airspace extending upward from 700 feet or more above the surface are published on Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO TN E5 Nashville, TN [Amended]

Nashville International Airport, TN
(Lat. 36°07'31" N, long. 86°40'35" W)
Smyrna Airport
(Lat. 36°00'32" N, long. 86°31'12" W)
Sumner County Regional Airport
(Lat. 36°22'36" N, long. 86°24'32" W)
Lebanon Municipal Airport
(Lat. 36°11'28" N, long. 86°18'56" W)
Murfreesboro Municipal Airport
(Lat. 35°52'39" N, long. 86°22'39" W)
John C. Tune Airport
(Lat. 36°10'56" N, long. 86°53'12" W)

That airspace extending upward from 700 feet above the surface within a 15-minute radius of Nashville International Airport and within a 90-mile radius of Smyrna Airport and within a 7-mile radius of Sumner County Regional Airport and within a 10-mile radius of Lebanon Municipal Airport and within a 9-mile radius of Murfreesboro Municipal Airport and within an 8-mile radius of John C. Tune Airport.

* * * * *

Issued in College Park, Georgia, on May 18, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–13446 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–20]

Proposed Amendment to Class E Airspace; Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Hoquiam, Washington, Class E airspace. The action would provide controlled airspace for a new instrument approach procedure at the Hoquiam, Bowerman Airport, Hoquiam,

Washington. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before July 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–20, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–20, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory. aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Hoquium, Washington, to provide controlled airspace for a new instrument approach procedure at the Bowerman Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace extending upward from 700 feet or more above the surface of the earth is now designated Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Hoquiam, WA [Revised]

Hoquiam, Bowerman Airport, WA
(Lat. 46°58'16" N, long. 123°56'12" W)
Hoquiam VORTAC
(Lat. 46°56'49" N, long. 124°08'58" W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Bowerman Airport and within a 13-mile radius arc of the airport, bounded on the north by a line 1.8 miles north of and parallel to the Hoquiam VORTAC 068° radial and on the south by a line 3 miles south of and parallel to the Hoquiam VORTAC 088° radial; that airspace extending from 1200 feet above the surface within 5.3 miles north and 7.9 miles south of the Hoquiam VORTAC 081° and 261° radials extending from 7 miles east to 16.6 miles west of the VORTAC.

* * * * *

Issued in Seattle, Washington, on May 13, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–13448 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board (NLRB).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) is publishing an advance notice of proposed rulemaking on the issue of the appropriateness of requested single location bargaining units in representation cases. This rule would be applicable only in cases involving initial organizing in the retail, manufacturing and trucking industries. The Board is publishing this advance notice to seek timely comments and suggestions from the public, labor organizations, employer groups, and other interested organizations on how the Board may best fulfill its statutory obligation to determine an appropriate unit when a single location bargaining unit is sought in these particular industries.

DATES: All responses to this notice must be received on or before July 29, 1994.

ADDRESSES: All responses should be sent to: Office of Executive Secretary, 1099 14th Street, NW., room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The question of the appropriateness of a single location bargaining unit when requested by a labor organization has been an issue in NLRB representation proceedings for almost 60 years. See, e.g., *Atlantic Refining Co.* 1 NLRB 359, 364–5 (1936). In the vast majority of cases, the single location unit is found appropriate, but only after extensive litigation of such factors as geographical separation, similarity of employee skills and terms and conditions of employment, autonomy of the location manager, extent of employee interchange, contact between facilities, functional integration, and other miscellaneous matters. The years of litigation have not been enlightening. A presumption of separate appropriateness has evolved in most industries when the unit petitioned for is single facility in scope. See, e.g., Sav-On Drugs, Inc., 138 NLRB 1032, 1033 (1962); and Haag Drug Co., 169 NLRB 877 (1968).[1] One court spent nine pages reciting the facts in two separate cases, involving two separate industries, reaching opposite results in the cases despite combining them for purposes of decision. *NLRB* v *Chicago Health & Tennis Clubs*, 567 F.2d 331 (7th Cir. 1977). (In the course of its opinion, the court noted that the Board's approach in this area has "fluctuated" (pages 335–336, fn. 7). We believe it is time to strive for more certainty and less litigation and delay on this issue, and invite comments on how best to do this in the retail, manufacturing and trucking industries.

Many different industries have been involved in litigation of this issue, but large groups of cases have centered on the retail, manufacturing and trucking industries. See e.g., Red Lobster, 300 NLRB 908 1990 (retail); J&L Plate, 310 NLRB 429 (1993) (manufacturing); and Bowie Hall Trucking 290 NLRB 41 (1988) (trucking). Although this issue is litigated in other industries, cases involving these other industries fall outside the scope of the Board's concern in this proceeding. With regard to retail, manufacturing and trucking, however, the factors considered by the Board in these cases, including the presumptive appropriateness of a separate facility, appear to us to be well-established. The Board's decisions in these industries are reasonably predictable; with certain limited exceptions, the single-facility unit usually is found appropriate. We believe, that in normal circumstances, it is no longer necessary for the Board and the parties involved to expend extensive resources litigating the issue. Hence, the Board seeks to promulgate a rule or rules to limit to the extent possible the necessity to adjudicate the appropriateness of petitioned-for single facility units in these three industries.

One possibility would be for the Board to promulgate a rule or several rules which are specifically tailored to these particular industries.[2] It is possible, though not certain, that the issue of separate appropriateness when raised in different industries may present different considerations. For example, a rule which finds a single facility appropriate, in part, because of a defined insubstantial amount of interchange among locations may differ between the trucking industry and the retail industry because of the differing nature of the duties of the employees in the two industries, including their itinerant as opposed to stationary work stations, respectively.

Another possibility would be to promulgate a single rule applicable across all three industries, deeming appropriateness to be determined by reference to several specified factors. For example, a rule could be promulgated which would declare appropriate any separate facility unit requested where (a) A given number of employees—for example, 15—were employed, or (b) no other facility of the employer was located within a specified distance—for example, one mile—and where, in addition, a supervisor within the meaning of the Act, located at the site, oversaw operation of the facility requested. Extraordinary circumstances would render the rule inapplicable. One such extraordinary circumstance might be where a set percentage (e.g., at least 10 percent) of the employees in the unit sought performed work at other locations a certain percentage (e.g., at least 10 percent) of the time (frequently referred to as temporary interchange.) Because they have seldom made a difference in prior Board decisions, permanent interchange would no longer be deemed relevant; nor would centralization of personnel functions, functional integration, or contact between employees at the facilities. If extraordinary circumstances were present, or if the rule were for other reasons inapplicable, the issue would be decided by adjudication, under published precedent.

The rule or rules also may address the definitional question of what constitutes a single facility. See, e.g., Child's Hospital, 307 NLRB 90 (1992).

Numerous other possibilities present themselves on these subjects.

Given the fact that the Board has made no decision on the propriety of any form of rulemaking in this area, we invite all interested parties to comment on (a) The wisdom of promulgating a rule or rules on this issue in the three specified industries, and (b) the appropriate content of such a rule or rules.

Statement of Member Stephens and Member Cohen

The rule declaring the presumptive appropriateness of a single facility bargaining unit has had a long and somewhat stable history, unlike the Board's turbulent experience with health care unit determinations that prompted our rulemaking on that subject in 1987. Nevertheless, given the prevailing view of

[1] The presumption does not apply when the unit petitioned for is multi-facility in scope. See, e.g., *Capital Coors Co.*, 309 NLRB 322 (1992), and cases cited therein.

[2] It is not the Board's present intention to promulgate rules for any particular sub-categories or sub-industries within the retail, manufacturing or trucking industries. The Board's intention is to promulgate a rule or rules with the broadest applicability possible within these three generic categories of industries.

our colleagues that the single facility presumption should be reexamined and perhaps strengthened, we have no objection to considering the matter in the context of informal rulemaking. Unlike case adjudication, an advance notice proceeding such as this will enable the Board to solicit comments from a broad cross-section of interested persons before making a final decision on the relevant issues, including whether rulemaking is at all warranted, whether (and how) the substantive law defining the pertinent factors that can rebut the presumption should be changed, and whether indeed extensive (and perhaps unnecessary) resources are being expended litigating this unit question. Until the appropriate administrative record is compiled, we join our colleagues in deferring a final decision on any of these questions.

Dated: Washington, DC, May 27, 1994.

By Direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 94–13429 Filed 6–1–94; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 20–22, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC, (202) 483–6000.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The Advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following:

—Borrower defenses
—Participation and selection criteria and procedures
—Origination criteria
—Entrance counseling requirements
—Certain cross-cutting issues affecting both the Direct Lending and the FFEL Programs, e.g., the medical/intern economic hardship deferment criteria
—Discussion of preamble language

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: May 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–13341 Filed 6–1–94; 8:45 am]

BILLING CODE 4000–01–M

34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 23–24, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC (202) 483–6000

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66;20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement Section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include discussion of preamble language.

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: May 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education; U.S. Department of Education.

[FR Doc. 94–13342 Filed 6–1–94; 8:45 am]

BILLING CODE 4000–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS CA38–5–6308; FRL–4890–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from pleasure craft coating operations and set general recordkeeping requirements for VOC emissions.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Chris Stamos (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION: The rules being proposed for approval into the California SIP are: South Coast Air Quality Management District (SCAQMD) Rule 1106.1, Pleasure Craft Coating Operations and Rule 109, Recordkeeping for Volatile Organic Compound Emissions. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 14, 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 14, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1106.1, Pleasure Craft Coating Operations, and for SCAQMD Rule 109, Recordkeeping for Volatile Organic Compound Emissions. SCAQMD adopted Rule 1106.1 on May 1, 1992 and Rule 109 on March 6, 1992. These submitted rules were found to be complete on November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for approval into the SIP.

Rule 1106.1 requires the use of low VOC coatings for marine pleasure craft coating operations and coating application methods with high transfer efficiencies, and Rule 109 sets out general recordkeeping requirements for regulating volatile organic compound (VOC) emissions for a variety of source categories. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Rule 1106.1 controls emissions from a source category for which EPA has not issued a CTG and Rule 109 is a general recordkeeping rule and therefore does not have a corresponding CTG. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's submitted Rule 109, includes the following significant changes from the current SIP:

- Adds a definition for Exempt Compounds,
- Removes Executive Officer Discretion from sections (c)(2) and (c)(3) as prescribed in the Technical Support Document (TSD) (dated January 15, 1992), and
- Adds EPA-approved test methods.

SCAQMD Rule 1106.1 is a new rule which was adopted to regulate emissions for the coating of marine pleasure craft.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1106.1 and Rule 109 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 18, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–13456 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 264, 265, 270, and 271

[FRL–4891–3]

Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a revised draft Regulatory Impact Analysis (RIA) prepared by the Agency for the proposed Resource Conservation and Recovery Act (RCRA) requirements for corrective action for solid waste management units at hazardous waste management facilities. The information includes data in support of the proposed Subpart S rule relating to corrective action, published on July 27, 1990, and the final rule for Corrective Action Management Units (CAMUs) and Temporary Units (TUs), promulgated on February 16, 1993.

DATES: Comments on this report must be submitted on or before July 18, 1994.

ADDRESSES: Copies of the report may be obtained by calling or visiting the RCRA Information Center. The RCRA Information Center is located in Room M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Requests for obtaining the document by telephone may be made by calling (202) 260–9327. Copies cost $0.15 per page.

Comments on the data in the document must be submitted to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Information Center (5305), 401 M Street, SW., Washington, DC 20460. One original and two copies of comments must be sent and identified by regulatory docket reference number (F–94–CA2A–FFFFF). In order not to be considered "late", comments must be postmarked on or before July 18, 1994.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (800) 424–9346; in the Washington D.C. metropolitan area the number is (703) 412–9810, TDD (703) 412–3323. For technical information regarding the Regulatory Impact Analysis, contact Linda Martin (Mail Code 5305), U.S. Environmental Protection Agency, 401 M Street, SW.,

Washington, DC 20460, telephone (202) 260–0062.

SUPPLEMENTARY INFORMATION:

I. July 27, 1990 Proposal

On July 27, 1990 EPA proposed a comprehensive rule (Subpart S) specifying corrective action requirements for facilities regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (55 FR 30798). The proposed rule was developed to replace the existing Hazardous and Solid Waste Amendments (HSWA) rules with a detailed regulatory program for implementing corrective action. A Regulatory Impact Analysis (RIA) to estimate the costs and benefits of the Subpart S proposed rule was developed to support the proposed rule. In that proposal, the EPA explained that it would continue to refine its estimates. As indicated in that proposal, the EPA is making available this revised draft RIA, and the Agency will take public comments, as well as comments received from EPA's Science Advisory Board (November 1993) into account in making its decision on how to proceed with the final Subpart S rulemaking.

This Subpart S RIA includes supporting data regarding studies conducted by EPA concerning the use of CAMUs in RCRA corrective actions. EPA used these supporting data in a recent rulemaking authorizing the establishment of CAMUs (58 FR 8658, February 16, 1993). Although the CAMU rulemaking included a separate RIA and a summary report, some commenters requested additional information on the data supporting that analysis. EPA believes the summary report provided sufficient detail for purposes of the CAMU rulemaking; however, because the results of the CAMU RIA will be important for regulatory options analysis in the final Subpart S RIA, a more detailed breakdown of the CAMU data is included in this first installation of data.

Additionally, the data made available through this notice may be relevant to a related RCRA rulemaking initiative, known as the Hazardous Waste Identification Rule (HWIR) for contaminated media, which is intended to result in amended RCRA rules for the management of contaminated media. Comments on the data made available in today's notice may assist the Agency in assessing how the CAMU rule may relate to this new rulemaking initiative.

II. Description of Available Data

Included in the RCRA Docket for review are:

—Draft Regulatory Impact Analysis for the Final Rulemaking on Corrective Action for Solid Waste Management Units: Proposed Methodology for Analysis (with APPENDICES), March 1993;
—CAMU Analysis Expert Panel Outputs summarizing remedy selection;
—"Supplementary Data for Corrective Action Management Units (CAMU): Facility characteristics" (Table 1);
—"Supplementary Data for Corrective Action Management Units (CAMU): SWMU characteristics" (Table 2); and,
—"Overview of SAB Comments and Recommendations on the Proposed RIA for the RCRA Corrective Action Rule," November 1993. (Compilation of six reports).

Dated: May 18, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–13450 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7095]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58.FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Louisiana	City of Shreveport. Caddo and Bossier Parishes.	Cross Bayou	At confluence with Red River	*166	*167
			At Old Blanchard Road	*169	*167
		Twelve Mile Bayou	At confluence with Cross Bayou	*167	*167
		Cross Bayou Lateral	At confluence with Cross Bayou	*167	*167
			At Abbie Street	*175	*176
			At confluence with Sycamore Lateral	None	*182
			Approximately 80 feet upstream of Weinstock Street.	None	*196
		McCain Creek	At confluence with Twelve Mile Bayou	*169	*167
			Approximately 1,300 feet upstream of confluence with Twelve Mile Bayou.	*171	*167
			Approximatelay 5,000 feet downstream of Pine Hill Road.	*175	*173
			At Pine Hill Road	*181	*178
		Cooper Road Ditch	At confluence with McCain Creek	None	*167
			At confluence with Green Oaks Lateral	None	*174
			At confluence with Audrey Lane Lateral	None	*186
		Green Oaks Lateral	At confluence with Cooper Road Ditch	None	*174
			At Pearl Street	None	*189
		Audrey Lane Lateral	Just upstream of confluence with Cooper Road Ditch.	None	*187
			Approximately 1,400 feet upstream of Fifth Street.	None	*200
		Sycamore Lateral	At confluence with Cross Bayou Lateral	None	*182
			Just upstream of Weinstock Street	None	*186
		Country Club Lateral	At confluence with Cross Lake	*176	*177
			At Jewella Street	*189	*189
			At San Jacinto Street	None	*198
			Approximately 750 feet upstream of Catherine Street.	None	*212
		Ford Park Lateral	At confluence with Cross Lake	None	*177
			Approximately 300 feet downstream of Sandra Drive.	None	*177
			Approximately 400 feet upstream of intersection of Gorton and Yarbough Roads.	None	*196
		Galaxy Lateral	At confluence with Cross Lake	*176	*177
			Just upstream of Jefferson-Paige Road	*196	*197
		Boggy Bayou	Approximately 4,500 feet upstream of Southern Pacific Railroad.	*167	*168
			Approximately 9,000 feet upstream of Southern Pacific Railroad.	*171	*170
			Approximately 13,500 feet upstream of Southern Pacific Railroad.	*172	*172
		Green Terrace Lateral	At confluence with Boggy Bayou	None	*168
			Just upstream of Green Terrace Road	None	*188
			At Cedar Creek Drive	None	*224
		Gilmer Bayou	At confluence with Boggy Bayou	*170	*169
			At Texas and Pacific Railroad	*188	*189
			At Bumcomb Road	*218	*212
		Industrial Park Lateral	At confluence with Gilmer Bayou	*173	*171
			At confluence with Lincoln Memorial Lateral.	*184	*186
			Just upstream of Bert Kouns Industrial Loop.	*215	*213
		Savanna Lateral	At confluence with Summer Grove Ditch	None	*183
			At Savanna Drive Ditch	None	*192
			Approximately 150 feet upstream of Mansfield Road.	None	*214
		Bayou Pierre	Approximately 15,000 feet downstream of Flournoy Lucas Road.	None	*152
			At Flournoy Lucas Road	*160	*157

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Gregg Street	*167	*167
			At Dalzell Street	None	*172
		St. Vincent Academy Ditch	At confluence with Ockley Ditch	None	*179
			Approximately 400 feet upstream of St. Vincent Convent.	None	*187
		Sand Beach Bayou	At confluence with Bayou Pierre	None	*158
			At confluence with Old River	*160	*160
			Just upstream of East 70th Street	*163	*162
		South Broadmoor Lateral	At confluence with Sand Beach Bayou	*159	*159
			At State Highway 1	*160	*159
			At Pomeroy Street	None	*159
		Old River	At confluence with San Beach Bayou	*160	*160
			At Bert Kouns Industrial Loop	*167	*162
			Approximately 3,500 feet upstream of 70th Street.	*167	*165
		Pierremont Ditch	At confluence with Bayou Pierre	None	*164
			At Gilbert Drive	None	*165
			Just upstream of Creswell Street	None	*170
		Ockley Ditch	At confluence with Gilbert Lateral	*168	*168
			At Southern Avenue	*181	*179
			At Woodrow Street	*193	*192
			Just upstream of Southern Pacific Railroad.	None	*209
		Gilbert Lateral	At confluence with Ockley Ditch	*168	*168
			Approximately 1,200 feet upstream of Ratcliffe Street.	*173	*172
		Betty Virginia Ditch	At confuence with Ockley Ditch	None	*172
			Just upstream of Baltimore Avenue	None	*180
			Approximately 500 feet upstream of confluence with Avery Ditch.	None	*199
		Average Ditch	At confluence with Betty Virginia Lateral	None	*197
			Approximately 1,000 feet upstream of confluence with Betty Virginia Lateral.	None	*209
		Lincoln Memorial Lateral	At confluence with Industrial Park Lateral	*184	*186
			Just upstream of Flournoy Lucas Road	*213	*214
			At West 70th Street	None	*232
		Shirley Francis Lateral	At confluence with Industrial Park Lateral	*207	*208
			Just upstream of Woolworth Road	*213	*212
		Southwood High Lateral	At confluence with Gilmer Bayou	*182	*178
			Approximately 3,200 feet upstream of confluence with Gilmer Bayou.	*188	*187
			Approximately 6,800 feet upstream of confluence with Gilmer Bayou.	*196	*196
		Rose Park Lateral	At confluence with Country Club Lateral	None	*180
			Just upstream of Sumner Street	None	*191
			Just upstream of Claiborne Street	None	*206
		Bickham Bayou	At confluence with Cross Lake	*176	*177
			Just upstream of Jefferson-Paige Road	*186	*188
			Just upstream of Pines Road	*213	*211
		Brush Bayou	Approximately 2,800 feet downstream of Flournoy Lucas Road.	*160	*163
			At confluence with Lynbrook Lateral	*174	*178
			Just upstream of 70th Street	*192	*193
			Just upstream of Missouri Pacific Railroad.	*210	*215
		Ranchmoor Lateral	At confluence with Brush Bayou	None	*167
			At Linwood Avenue	None	*168
			Approximately 500 feet upstream of Frontage Road.	None	*181
		Brookwood Ditch	At confluence with Brush Bayou	*166	*172
			Just upstream of Acacia Street	*177	*182
			Just upstream of Hawthorne Street	None	*193
		Lynbrook Lateral	At confluence with Brush Bayou	None	*173
			Just upstream of Lynwood Avenue	None	*184
			Just downstream of St. Vincent Avenue	None	*189
		81st Street Drainage Ditch	At confluence with Brush Bayou	None	*182
			Just upstream of St. Vincent Avenue	None	*200
			Approximately 200 feet upstream of the intersection of 75th Street and Southern Avenue.	None	*208

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		75th Street Drainage Ditch	At confluence with Brush Bayou	*178	*182
			At Wallace Avenue	*190	*190
			Approximately 700 feet upstream of 68th Street.	None	*207
		Airport Ditch	At confluence with Brush Bayou	*178	*183
			Just upstream of West 70th Street	*209	*206
			Just upstream of Meriwether Road	*229	*228
		Jenkins Acres Lateral	At confluence with Airport Ditch	None	*190
			Just upstream of Missouri Pacific Railroad.	None	*197
			Approximately 2,300 feet upstream of Missouri Pacific Railroad.	None	*203
		Hollywood Ditch	At confluence with Airport Ditch	*196	*194
			At Mayfield Street	*211	*209
			Approximately 2,400 feet upstream of Hollywood Avenue.	*220	*217
		Murry Lateral	At confluence with Hollywood Ditch	None	*212
			Just upstream of Baxter Street	None	*221
			Just upstream of Interstate Highway 20	None	*240
		Cargill Lateral	At confluence with Airport Ditch	None	*194
			Just upstream of Wisteria Street	None	*213
			Just upstream of Lotus Lane	None	*224
		Courtesy Lane Lateral	At confluence with Brush Bayou	None	*186
			At Courtesy Lane	None	*202
			Approximately 700 feet upstream of Hollywood Street.	None	*210
		Werner Park Lateral	At confluence with Brush Bayou	*198	*198
			At Hollywood Avenue	*206	*207
			At Westover Street	*213	*212
		Summer Grove Ditch	At Williamson Way	*170	*170
			Just downstream of Southern Pacific Railroad.	*184	*183
			Just upstream of Industrial Loop	None	*210
		Lambert Park Lateral	At confluence with Summer Grove Ditch	None	*172
			Just upstream of Baird Road	None	*189
			Approximately 350 feet upstream of Urban Dale Road.	None	*200

Maps are available for review at the City of Shreveport, Project Engineer's Office, 1234 Texas Avenue, Shreveport, Louisiana. Send comments to The Honorable Hazel Beard, Mayor, City of Shreveport, P.O. Box 31109, Shreveport, Louisiana 71130.

Nebraska	Sarpy County Unincorporated Areas.	Big Papillion—Papillion Creek.	At Laplatte Road	*967	*967
			At the extraterritorial limits of the City of Bellevue, approximately 2,300 feet downstream of Burlington Northern Railroad.	*973	*973

Maps available for review at Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska. Send comments to The Honorable Ron Woodle, Chairman, Sarpy County, Board of Commissioners, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska 68046.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 24, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–13394 Filed 6–1–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants; Notice of Availability of Data Pertaining to the Subspecies Taxonomy of the California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, opening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) listed the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species on March 25, 1993. On May 2, 1994, this listing was invalidated by the United States District Court for the District of Columbia on the basis that the Secretary of the Interior failed to obtain and make available for public review and comment the data underlying a published scientific report on the subspecific taxonomy of the California gnatcatcher. In response to the court's

decision the author of that report has provided these data to the Service. The Service if seeking public comment on these data.

DATES: Comments and materials must be received August 1, 1994.

ADDRESSES: Copies of the subject data are available from the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials concerning these data should be submitted to the above address. The data, public comments, and other materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the address listed above (619/431–9440; facsimile 619/431–9624).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1993, the U.S. Fish and Wildlife Service published a final rule in the **Federal Register** determining the coastal California gnatcatcher to be a threatened species (58 FR 16741). In its decision to list the gnatcatcher the Service relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory, Manomet, Massachusetts. As is standard practice in the scientific community, the Service did not request, nor was it offered, the data used by Dr. Atwood in reaching his conclusions. Instead, the Service relied upon the conclusions published in Dr. Atwood's peer reviewed scientific report on the subspecific taxonomy of the California gnatcatcher (Atwood 1991). This report was used by the Secretary to support, in part, a finding that the southern range limit of the coastal California gnatcatcher occurs at 30 degrees north latitude in Baja California, Mexico.

The Building Industry Association of Southern California (BIA) and others filed suit in Federal court challenging the listing on several grounds, including the claim that the Service was legally required to obtain and make Atwood's data available for review and comment. On May 2, 1994, the court ruled in favor of the BIA and vacated the listing. In response to the court's decision, Dr. Atwood has agreed to release his data to the Service. With this notice, the Service makes available for public review and comment Dr. Atwood's data.

The Secretary has filed a motion for reconsideration of the court's decision and, alternatively, a motion to stay the portion of the decision that vacated the listing while the Service receives public comment on these data. These motions are currently pending before the court. The Service is also reviewing several other options to provide the protection of the Endangered Species Act to the gnatcatcher. These options include appealing the court's decision, listing the gnatcatcher on an emergency basis, and proposing a new rule to list the gnatcatcher.

The Service solicits public comments on Dr. Atwood's data in order to assist it in further evaluating the decision to list the coastal California gnatcatcher pursuant to the Endangered Species Act.

References Cited

Atwood, J.L. 1991. Subspecies limits and geographic patterns of morphological variation in California gnatcatchers (*Polioptila californica*). Bull. Southern California Acad. Sci. 90(3):118–133

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: May 25, 1994.

Thomas J. Dwyer,

Acting Regional Director, Region I, U.S. Fish and Wildlife Service.

[FR Doc. 94–13375 Filed 6–11–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 27, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- *Agricultural Stabilization and Conservation Service*

7 CFR 1413, 1414, 1415 and 1416—Forms for Participation in Price Support and Production Adjustment Programs

ASCS–503, 658–1; CCC–135, 135 appendix, 136, 300, 300 appendix, 302, 406, 406 appendix, 477, 477 appendix, 477A, 477B, 505, 507A

Annually

Farms; 1,734,000 responses; 430,400 hours

Bruce Hiatt (202) 690–2798

- *Agricultural Marketing Service*

Domestic Dates Produced or Packed in Riverside County, California—Marketing Order No. 987

FV–191, FV–192, FV–72, & FV–73

Recordkeeping; monthly; annually; biennially

Farms; Small businesses or organizations; 709 responses; 263 hours

Valerie L. Emmer, (202) 205–2829

Extension

- *Federal Crop Insurance Corporation*

Collector's Contact Report

FCI–3

On occasion

Individuals or households; farms; 600 responses; 300 hours

Bonnie L. Hart, (202) 254–8393

- *Federal Crop Insurance Corporation*

Peach Producer's Picking Records

FCI–55

On occasion

Individuals or households; farms; 3,000 responses; 3,000 hours

Bonnie L. Hart (202) 254–8393

- *Packers and Stockyards Administration*

Regulations and Related Reporting and Recordkeeping requirements; Packers and Stockyards Act

Recordkeeping; on occasion; semi-annually; annually

Businesses or other for-profit; 29,517 responses; 361,874 hours

Patrick D'Agostino, (202) 720–8214

New Collection

- *Cooperative State Research Service*

National Research Initiative Competitive Grants Program Application Kit

CSRS–1232, 1233, 1234

On occasion

Individuals or households; businesses or other for-profit; Federal agencies or employees; non-profit institutions; 4,563 responses; 4,140 hours

Robert MacDonald, (202) 401–4114.

Donald E. Hulcher,

Deputy Department Clearance Officer.

[FR Doc. 94–13401 Filed 6–1–94; 8:45 am]

BILLING CODE 3401–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–94–29]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 29, 1994.

Time: 10 a.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To elect officers, establish submarketing areas, discuss selling schedules, review the 1994 policies and procedures, and other related matters for the 1994 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 26, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–13363 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Rocky Mountain Region; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County, Colorado; Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on an AA Production, Inc., proposal to drill 4 coal bed methane wells on existing leases and construct a transportation system to these wells within the Clear Creek Roadless Area on the Gunnison National Forest, Paonia Ranger District.

approximately 23 miles north, northwest of the town of Paonia, Colorado.

DATES: An open house is scheduled for June 9, 1994, at the Panonia Town Hall from 2–5 p.m. and from 6–9 p.m. to display and discuss the Twin-Creeks-Unit proposal. Comments concerning the scope and issues of the analysis should be received by July 15, 1994; Publication of Draft EIS: December, 1994; final EIS: July, 1995.

ADDRESSES: Send written comments to Twin-Creeks-Unit, Paonia Ranger District, PO Box 1030, North Rio Grande Ave., Paonia, CO 81428.

FOR FURTHER INFORMATION CONTACT: Mike Ward, Paonia Ranger District, PO Box 1030, North Rio Grande Ave., Paoni, CO 81428, (303) 527–4260.

SUPPLEMENTARY INFORMATION: AA Production, Inc. has submitted a proposal to drill 4 coal bed methane wells with foreseeable development of additional wells if the first 4 are successful. Drilling would occur on existing leases granted before 1980 in the Clear Creek Roadless area between Deadhorse Creek and Jones Park. The wells would be located within one mile of an existing road (FDR 844) and a pipeline which parallels the road. The 4 proposed wells are more precisely located in the Southwest Quarter of Section 21—Township 10 South—Range 90 West of the 6th Principal Meridian.

It is important to remain clear about the decisions to be made on the Twin-Creeks-Unit proposal. Decisions on whether or not this area of the Forest will or will not be available for oil and gas leasing have already been made. AA Production, Inc., holds valid oil & gas leases and have a legal right to drill on their leases. The 1993 Forest Oil & Gas Leasing EIS has allocated the Clear Creek Roadless area to oil & gas development. These decisions will not be revisited, unless an unavoidable effect on some very significant resource is discovered through this analysis. At this point, we do not anticipate any effects such as this. We do have an obligation to consider all environmental factors, analyzed to the latest standards, before we allow the proposed oil and gas development to occur so appropriate protection or mitigation measures can be developed and implemented. This EIS will accomplish this.

The Forest Service will decide how, when, and exactly where, oil & gas development will occur while minimizing effects on the human environment to the extent practical. The Forest Service has responsibility for managing surface resources. Specifically, Forest Service decisions to be made are:

1. Determine specifically where, how, when, and under what conditions the transportation system and well pads will be developed for the 4 wells proposed for drilling.
2. Determine general locations for the foreseeable wells, and any other mitigation needed in addition to those for the first 4 proposed wells.
3. Determine if there are site specific unavoidable effects on very significant resources in the area which would preclude drilling or surface occupancy.

Any well development other than the current proposal to drill 4 wells will require additional site specific environmental analysis.

The Bureau of Land Management is responsible for deciding how actual down-hole drilling activities will occur and has the authority to approve the Application For Permit To Drill (APD).

Preliminary scoping has identified nine issues. These issued are: (1) Visual Quality, (2) The proposed wells are within a roadless area identified during the 1979 RARE II process, (3) Transportation System, Development, (4) Wildlife Management and Protection including Threatened, Endangered, & Sensitive Wildlife & Plants, (5) Retention of Water Quality, Wetlands, and Riparian areas, (6) Soils & Geologic Hazards, (7) Effects on Recreation Opportunities & Outfitter Guides, (8) Social & Economic Effects, (9) Cultural & Historic Resources.

Scoping will consist of public meetings, news releases, and a scoping letter sent to people, organizations, and public agencies who may be interested in this project. An open house is scheduled for June 9, 1994. A new release to local media and interested parties is being made in conjunction with the June 9 meeting.

The U.S. Fish & Wildlife Service will be consulted on possible effects on threatened and endangered plant and animal species and may be asked to provide expertise for the environmental analysis. The Forest Service may consult with other local, State, or Federal agencies as needed. The Bureau of Land Management and the U.S. Geological Survey will be asked to serve as Cooperating Agencies. The U.S. Geological Survey will serve as a coal-bed-methane well expert. The Bureau of Land Management will serve as a drilling expert and is responsible for approving actual down-hole drilling techniques. The U.S. Forest Service will be the Lead Agency.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the draft environmental impact statement will be regarded as public information.

The responsible Bureau of Land Management official is Sally Wisley, Area Manager, San Juan Resource Area, Federal Building, 701 Camino Del Rio, Durango, Colorado 81301.

The responsible Forest Service official is Ray L. Kingston, Paonia District Ranger, Grand Mesa, Uncompahgre and Gunnison National Forests, P.O. Box

1030, North Rio Grande Avenue, Paonia, Colorado 81428.

Dated: May 26, 1994.

Ray L. Kingston,

District Ranger.

[FR Doc. 94–13378 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052694D]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will hold a meeting on June 17, 1994, in the Conference Room at the NMFS Technical Service Division, 911 NE. 11th Avenue, Portland, OR 97232. The meeting will begin at 8 a.m. and will continue until all business is completed.

The purpose of the meeting is to review appeals on applications for West Coast groundfish limited entry permits, which were denied by NMFS.

FOR FURTHER INFORMATION CONTACT: Peter Fricke, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; telephone: (206) 526–6140.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Fricke at (206) 526–6140 at least 5 days prior to the meeting date.

Dated: May 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13361 Filed 6–1–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy has submitted the following two public information collection packages to the Office of Management and Budget for renewal under the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), in accordance with sections 3506 and 3513, thereof.

The packages cover management and procurement collections of information from management and operating contractors of the Department of Energy's Government-owned/contractor-operated facilities, offsite contractors, financial assistance recipients, grantees, and the public. The information is used by Departmental management to exercise management oversight concerning the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current Office of Management and Budget control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the Office of Management and Budget Desk Officer at the following address no later than July 5, 1994. Mr. Troy Hillier, Department of Energy Desk Officer, Office of Management and Budget (OIRA), room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the Office of Management and Budget Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the Department of Energy contact listed in this notice.)

FOR FURTHER INFORMATION CONTACT: Mary Ann Wallace, Record Management Division (HR–422), Department of Energy, Washington, DC 20585, (301) 903–3524.

Package Title: Financial Assistance and Incentives.

Current Office of Management and Budget No.: 1910–0400.

Type of Respondents: Department of Energy management and operating contractors, offsite contractors, grantees, and the general public.

Estimated Number of Responses: 66,907.

Estimated Total Burden Hours: 666,983.

Purpose: This information is required by the Department to ensure that financial assistance and incentives resources and requirements are managed efficiently and effectively; and to exercise management oversight of Department of Energy contractors, grantees, and the general public. The package contains 58 information and/or recordkeeping requirements.

Package Title: Safeguards and Security.

Current Office of Management and Budget No.: 1910–1800.

Type of Respondents: Department of Energy management and operating contractors and offsite contractors.

Estimated Number of Responses: 101,830.

Estimated Total Burden Hours: 638,802.

Purpose: This information is required by the Department to ensure that safeguards and security resources and requirements are managed efficiently and effectively; and to exercise management oversight of Department of Energy contractors. The package contains 32 information and/or recordkeeping requirements.

Raymond S. Barrow,

Director, Office of IRM Policy, Plans, and Oversight.

[FR Doc. 94–13418 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463,86 Stat. 770), notice is hereby given of a meeting of the Advisory Committee on Human Radiation Experiments.

DATES: June 13, 1994, 9:30 a.m.–5:30 p.m.; June 14, 1994, 9 a.m.–3:30 p.m.

ADDRESSES: The Ramada Plaza Hotel, 10 Thomas Circle, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, suite 600, Washington, DC 20036. Telephone: (202) 254–9795.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or

sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, June 13, 1994

9 a.m. Call to Order and Opening Remarks
9:15 a.m. Briefing on Background Issues, Advisory Committee Members
10:45 a.m. Break
11 a.m. Briefing on Background Issues, Advisory Committee Members (continued)
12:15 p.m. Lunch
1:15 p.m. Discussion, Status and Strategies of Document Collection and Review
3 p.m. Break
3:15 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
4 p.m. Public Comment
5 p.m. Meeting Adjourned

Tuesday, June 14, 1994

9 a.m. Opening Remarks
9:15 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
10:45 a.m. Break
11 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
12:15 p.m. Lunch
1:15 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
2 p.m. Subcommittee meetings on Scope, Cold War Data Collection, Ethics Data Collection, and Outreach
3:25 p.m. Future Meeting(s)
3:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This notice is being published with less than fifteen days notice because of programmatic delays.

Issued at Washington, DC on May 27, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–13421 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–64–000, et al.]

Middleborough Gas and Electric Department and Pascoag Fire District, et al.; Electric Rate and Corporate Regulation Filings

May 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Middleborough Gas and Electric Department and Pascoag Fire District v. Montaup Electric Company and Eastern Edison Company

[Docket No. EL94–64–000]

Take notice that on May 5, 1994, Middleborough Gas and Electric Department and Pascoag Fire District (Middleborough) tendered for filing a complaint against Montaup Electric Company and Eastern Edison Company. In its complaint Middleborough moves to consolidate this proceeding with Montaup Electric Company, ER94–1062–000.

Middleborough and Pascoag seek an order from the Commission: (1) Finding that the rates charged by Montaup to Middleborough and Pascoag for their wholesale power purchases, as well as under the Middleborough breaker and radial contracts, may produce excessive revenues from Middleborough and Pascoag and should be subject to reduction and refund consistent with this complaint; (2) establishing a refund effective date 60 days after the date of filing of this complaint; (3) setting for hearing under section 206 whether the provisions of the Middleborough and Pascoag contracts regarding contract demands and terminations are unjust, unreasonable, and unduly discriminatory and preferential, or otherwise contrary to the public interest and if so, establishing just, reasonable and not unduly discriminatory or preferential terms; (4) consolidating the consideration of the matters raised by this complaint with the ongoing proceeding in Docket No. ER94–1062–000; and (5) affording Middleborough and Pascoag such other relief as may be deemed appropriate.

Comment date: June 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Associated Municipal Power Systems v. PacifiCorp

[Docket No. EL94–66–000]

Take notice that on May 18, 1994, the Utah Associated Municipal Power Systems (UAMPS) tendered for filing a revised complaint against PacifiCorp. In its complaint UAMPS states that PacifiCorp has refused to provide firm transmission services over existing facilities from UAMPS' resource available at Four Corners to UAMPS' loads in PacifiCorp's control area. UAMPS further states that it had seriously filed its complaint on May 6, 1994, but that it had revised the complaint and refiled it in light of recent Commission precedent. UAMPS requests that the revised complaint be substituted for its May 6, 1994 complaint.

Comment date: June 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Cogenerators of Southern California, Midway-Sunset Cogeneration Company, Harbor Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company

[Docket No. EL94–69–000]

Take notice that on May 16, 1994, Cogenerators of Southern California and its members tendered for filing a petition asking the Commission to undertake an enforcement action against the California Public Utilities Commission (CPUC) for implementing improperly the Commission's regulations under PURPA with respect to the calculation of avoided cost payments at the time of delivery.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90–225–016]

Take notice that on April 7, 1994, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by the Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding, 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

5. Elkem Metals Company

[Docket No. ER94-966-000]

Take notice that Elkem Metals Company (Elkem), on April 22, 1994, tendered for filing with the Commission additional information to its February 9, 1994, filing of an initial rate schedule pursuant to a request by Commission Staff.

Copies of the filing were served by Elkem upon what will be its sole jurisdictional customer, Appalachian.

Elkem renews the request for waiver made in its original February 9, 1994, filing of the Commission's Rules and Regulations to permit the proposed sale to become effective on less than 60 days notice.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13389 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-557-000, et al.]

High Island Offshore System, et al.; Natural Gas Certificate Filings

May 24, 1994.

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP94-557-000]

Take notice that on May 19, 1994, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-557-000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation service currently being rendered for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, HIOS proposes to terminate its firm transportation service for Northern which HIOS is rendering in accordance with its Rate Schedule T-9, as well as associated interruptible overrun transportation service for Northern rendered in accordance with its Rate Schedule I. HIOS states that the currently effective contract demand under Rate Schedule T-9 is 20,657 Mcf per day and the volume under Rate Schedule I is 74,800 Mcf per day. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-9 on August 22, 1994, in accordance with the terms of such rate schedules and in accordance with a timely notice given by Northern to HIOS.

HIOS states that no facilities are proposed to be abandoned and that the capacity resulting from the proposed abandonment will be available under its open access tariff for services it provides under part 284 of the Commission's regulations.

Comment date: June 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. High Island Offshore System

[Docket No. CP94-558-000]

Take notice that on May 19, 1994, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-558-000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation service currently being rendered for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, HIOS proposes to terminate its firm transportation service for Northern which HIOS is rendering in accordance with its Rate Schedule T-10, as well as associated interruptible overrun transportation service for Northern rendered in accordance with its Rate Schedule I. HIOS states that the currently effective contract demand under Rate Schedule T-10 is 67,800 Mcf per day and the volume under Rate Schedule I is 60,000 Mcf per day. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-10 on August 31, 1994, in accordance with the terms of an agreement between Northern and HIOS.

HIOS states that no facilities are proposed to be abandoned and that the capacity resulting from the proposed abandonment will be available under its open access tariff for services it provides under part 284 of the Commission's regulations.

Comment date: June 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94-559-000]

Take notice that on May 20, 1994, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed a request, pursuant to §§ 157.205 and 157.212 of the Commission's Regulations and Applicant's blanket authority granted in Docket No. CP82-413-000, for authorization to construct and operate delivery point facilities in Essex County, Massachusetts, in order to deliver gas to Colonial Gas Company (Colonial), all as set out in the request on file with the Commission and open to public inspection.

Applicant proposes to construct a delivery point interconnect allowing Colonial to source its gas under one or more of Applicant's existing contracts under Rate Schedule FT-A. Such gas will be transported pursuant to authority granted Applicant in Docket No. CP87-115-000, and § 284.223 of the regulations.

Applicant proposes to install, own, operate and maintain data acquisition and control equipment, one six-inch hot tap assembly, approximately 2100 feet of 8' pipe, and measurement facilities located at M.P. 270 - 101+8.93 in Essex County, Massachusetts. The cost of this new delivery point is $690,000, to be reimbursed by Colonial.

Applicant states that the total quantity authorized for delivery to Colonial will not increase as a result of this proposal. Applicant asserts that the proposed delivery point is not prohibited by its tariff. Also, Applicant states that it has enough capacity to make deliveries at the proposed delivery point without harming other customers.

Comment date: July 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13390 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11326–002 Utah]

Colton Springs Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Colton Springs Hydro Associates, Permittee for the Colton Springs Project No. 11326, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11326 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on Colton Springs, a tributary to the Price River, in Carbon County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11326 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13348 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11179–001 Idaho]

Faulkner Land and Livestock, Inc.; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Faulkner Land and Livestock Inc., Permittee for the Freeway Drop Project No. 11179, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11179 was issued February 19, 1992, and would have expired January 31, 1995. The project would have been located on the Little Wood River, utilizing the North Side Canal Company's canal system, in Elmore County, Idaho.

The Permittee filed the request on May 9, 1994, and the preliminary permit for Project No. 11179 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13347 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11327–001 Utah]

Leamington/Rocky Ford Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Leamington/Rocky Ford Hydro Associates, Permittee for the Leamington/Rocky Ford Project No. 11327, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11327 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on the existing Utah Canal Diversion structure, on the Sevier River, in Jaub County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11327 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13349 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11328–001 Utah]

Sevier Bridge Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Sevier Bridge Hydro Associates, Permittee for the Sevier Bridge Project No. 11328, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11328 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located at Sevier Bridge Dam, on the Sevier River, in Juab County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11328 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR

385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13350 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-161-001]

Avoca Natural Gas Storage; Petition

May 26, 1994.

Take notice that on May 17, 1994, Avoca Natural Gas Storage (Avoca), One Bowdoin Square, Boston, Massachusetts 02114, filed in Docket No. CP91-161-001 a petition, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of a temporary exemption from certificate requirements, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Avoca seeks an exemption to construct and test three water production wells and five monitoring wells. The data received will enable the Susquehana River Basin Commission (SRBC) [1] to review the water withdrawal impacts of the Avoca project. Avoca states that the SRBC's review and approval of the proposed water withdrawal is necessary before construction commences on its natural gas storage project pursuant to the issuance of a section 7(c) certificate by this Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 3, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13359 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[1] The SRBC was created pursuant to a federal compact. The compact was ratified by New York, Maryland, and Pennsylvania, the three states which border the river basin. The SRBC's regulations are found at 18 CFR 801, *et seq.*

[Docket No. RP94-258-000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 142, 147 and 148, and Original Sheet No. 148A, with a proposed effective date of June 23, 1994.

Canyon states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Canyon requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Canyon states that a copy of the filing was mailed to Canyon's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 85 North Capitol Street, NE., Washington, DC 20426, in accordance with section 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13358 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-021]

Columbia Gulf Transmission Co.; Compliance Filing

May 26, 1994.

Take notice that on May 19, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed changes to be effective January 1, 1994:

Second Substitute First Revised Sheet No. 019A

On February 7, 1994, Columbia Gulf filed revised tariff sheets pursuant to the Federal Energy Regulatory Commission's (Commission) Letter Order issued on January 19, 1994, in Docket Nos. RP91-160, *et al.*, RP92-2, *et al.*, RP90-107, *et al.*, and RS92-6, *et al.*

On May 10, 1994, the Commission issued a Letter Order (Order) in Docket No. RP91-160-018, relating to the February 7, 1994, filing which directed Columbia Gulf to refile Second Substitute First Revised Sheet No. 019A to correctly supersede Sub 1st Revised Sheet No. 019A. Columbia Gulf states that the instant filing is being tendered to comply with that directive.

Columbia Gulf states that a copy of the filing is being served upon all parties to these proceedings, jurisdictional customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13351 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-556-000]

Colorado Interstate Gas Co.; Notice of Request Under Blanket Authorization

May 26, 1994.

Take notice that on May 19, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a prior notice

request with the Commission in Docket No. CP94–556–000 pursuant to §§157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a two-inch delivery tap to provide interruptible service to Amoco Energy Trading Corporation (Amoco) under CIG's blanket certificates issued in Docket Nos. CP83–21–000 and CP86–589–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

CIG proposed to construct and operate a two-inch meter run and appurtenant facilities in Las Animas County, Colorado for the interruptible delivery of approximately 200 Mcf per day of start-up fuel gas to Amoco. CIG states that its FERC Gas Tariff does not prohibit the addition of the proposed delivery point. CIG also states that the proposed deliveries are within the certificated entitlements for the proposed delivery tap.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13388 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–45–000]

El Paso Natural Gas Co.; Tariff Filing

May 26, 1994.

Take notice that on May 24, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, its Third Revised Volume No. 1 Tariff.

El Paso states that it has submitted for filing its Third Revised Volume No. 1 which replaces El Paso's Second Revised Volume No. 1 in its entirety. El Paso states that the tendered tariff volume has been significantly repaginated due to a change in word processing computer software. However, El Paso states, the textual contents have not changed except for minor conforming changes.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13345 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–46–000]

El Paso Natural Gas Co.; Tariff Filing

May 26, 1994

Take notice that on May 24, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, its Second Revised Volume No. 1–A Tariff.

El Paso states that it has submitted for filing its Second Revised Volume No. 1–A which replaces El Paso's First Revised Volume No. 1–A in its entirety. El Paso states that the tendered tariff volume has been repaginated due to a change in word processing computer software. However, El Paso states the textual contents have not changed except for minor conforming changes related to the repagination.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13346 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–255–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 247, Original Sheet No. 247A, First Revised Sheet Nos. 289, 297 and 298, and Original Sheet No. 298A, with a proposed effective date of June 23, 1994.

Natural states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change (1) section 8.5 of the General Terms and Conditions to conform to Commission Orders in Docket No. RS94–45, (2) the definition of Short-Term Prearranged Releases, and (3) the deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Natural requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13355 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–254–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 23, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1994:

Second Revised Sheet Number 156
Third Revised Sheet Number 157
First Revised Sheet Number 227
First Revised Sheet Number 279
Second Revised Sheet Number 455
Third Revised Sheet Number 501

Northern states that the purpose of this filing is (i) to revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) to revise the testing period for measuring equipment; (iii) to reduce the posting period for capacity releases of a calendar month; and (iv) to reflect housekeeping changes.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to decrease the Maximum Rate from 4.170 cents per 100 Dekatherm-Miles to 4.090 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 2.225 cents per 100 Dekatherm-Miles to 2.182 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are to be effective July 1, 1994, in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 3, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13354 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–104–000]

Overthrust Pipeline Co.; Informal Settlement Conference

May 26, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1993).

For additional information, contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–1176.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13352 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–256–000]

Stingray Pipeline Co.; Proposed Changes In FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 150, 156 and 157, and Original Sheet No. 157A, with a proposed effective date of June 23, 1994.

Stingray states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Stingray requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13356 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–257–000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 149, 155 and 156, and Original Sheet No. 156A, with a proposed effective date of June 23, 1994.

Trailblazer states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Trailblazer requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 285.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13357 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–172–001 and RP94–205–001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 23, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet Nos. 6 and 6A, with a proposed effective date of June 1, 1994.

WNG states that the purpose of this filing is to comply with a Commission order dated May 6, 1994, in the above-referenced dockets and propose revised fuel reimbursement percentages to be applied to transportation on WNG's system.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13353 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Environmental Management

Innovative Technologies to Accelerate Characterization, Treatment, Remediation, and Storage/Disposal of Mixed Radioactive/Hazardous Waste at Federal Facilities

AGENCY: Office of Environmental Management, U.S. Department of Energy (DOE).

ACTION: Notice of request for information (RFI).

SUMMARY: The U.S. Department of Energy's (DOE) Office of Environmental Management (EM) is soliciting information from private companies regarding their capabilities to demonstrate new and innovative technologies that may accelerate or enhance site activities in characterization, treatment, remediation, and storage/disposal of mixed radioactive/hazardous wastes at federal facilities in the Western United States. This is not a solicitation for government proposals or bids for procurement or financial assistance, but rather a request for information on new and innovative technologies which may address characterization, treatment, and storage/disposal of mixed or hazardous waste. Based on information received from this RFI, a formal RFP(s) may be issued focusing on specific needs and site characteristics.

DATES: Information should be submitted by August 31, 1994.

ADDRESSES: Information should be submitted to Dr. George Coyle, Office of Technology Development, EM–50, U.S. Department of Energy, 1000 Independence Avenue SW., room 5B–014, Washington, DC 20585. FAX 202–586–6773.

FOR FURTHER INFORMATION CONTACT: Dr. George Coyle, at the above address, or by phone at 202–586–6382.

SUPPLEMENTARY INFORMATION: The responses to the RFI will be reviewed by the Mixed Radioactive/Hazardous Waste Working Group of the Federal Advisory Committee to Develop On-Site Innovative Technologies (DOIT Committee). The DOIT Committee consists of the Secretaries of the U.S. Departments of Energy, Defense, and the Interior, the Administrator of the U.S. Environmental Protection Agency, and members of the Western Governor's Association (or their designees). The Federal Advisory Committee will recommend a program to review information concerning technologies regarding environmental restoration/waste management at DOE sites in western states; recommending demonstration projects for implementation; and identifying regulatory, institutional, or other barriers to technology development. Pursuant to the Advisory Committee's Charter, the initial lead agency is the Department of Energy, for which the Office of Technology Development serves as the coordinating office.

The Department of Energy has requested funding in its budget proposal for a project to conduct field demonstrations of innovative technology involving mixed waste (characterization, treatment, and storage/disposal) beginning in calendar year 1995. This program will implement the recommendations of the DOIT Committee. The goal will be to expedite cleanup of federal sites by demonstrating environmental technologies which will address regulatory barriers and public concerns throughout the technology demonstration project process.

Factors that should be addressed in descriptions of cleanup technology are:

—Ability to alleviate risks to public health and safety and to the environment;
—Capacity for public acceptance, permit and regulatory issues;
—Extent of private sector and multi-agency involvement;
—Potential for technology transfer or commercialization;
—Likelihood of successful demonstration (technical risks, technology component and system);
—Capacity for volume reduction of hazardous and radioactive components;
—Viability of final waste forms and treated secondary waste forms which can gain public acceptance, be relatively stable, and meet regulatory criteria;
—Magnitude of recycling and material recovery potential; and
—Ease of implementation to full scale initiative.

Additionally, the following factors are considered to be important by the Mixed Radioactive/Hazardous Waste Working Group of the Committee in its review of cleanup technologies:

—The extent to which the technologies will ultimately remediate mixed

waste at sites in one or more of the following states and territories: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Marianna Islands, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming;

—The magnitude of the problem to which this technology can be applied (total volume, multiple sites, etc.); and

—The extent to which the stakeholders will want to support DOE's development of the technology.

Interested parties should submit a short paper not to exceed five (5) pages that will describe the technology and explain why it will ultimately achieve the above mentioned objectives. If possible, papers should not include corporate and proprietary information. Respondents are advised to clearly identify any and all proprietary data submitted in response to this RFI, so that the Department is made aware of information which may need such protection. The duty to identify proprietary information is not the responsibility of the Department of Energy. In addition, the Department is under no obligation to pay for the expenses of submitting responses to the RFI. The dates on which the Working Group will discuss specific concept papers will be published in advance in the **Federal Register**. Those meetings will be open to the public.

Issued in Washington, DC, on May 25, 1994.

Clyde Frank,

Deputy Assistant Secretary, Office of Technology Development.

[FR Doc. 94–13420 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4891–4]

Air Pollution Control; Ozone Transport Commission; Recommendation That EPA Adopt Low Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency.

ACTION: Notice of Round-Table Meetings.

SUMMARY: On February 10, 1994, the Northeast Ozone Transport Commission (OTC) submitted a recommendation to EPA under Section 184 of the Clean Air Act (the Act), for additional control measures to be applied throughout the Northeast Ozone Transport Region (OTR). Specifically, the OTC recommended that EPA require all State members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle (OTC LEV or LEV) program for the entire OTR. Under Section 184(c)(3) of the Act, EPA is to review the OTC's recommendation to determine whether the additional control measures are necessary to bring any area in the OTR into attainment by the dates specified in the Act, and are otherwise consistent with the Act. Based on this review, EPA is obligated to approve, disapprove, or partially approve and partially disapprove the OTC's recommendation.

EPA recently issued a proposed rule describing the framework for EPA's action on the OTC's recommendation and describing the issues EPA is considering in deciding whether to approve, disapprove, or partially approve and partially disapprove the recommendation. Thereafter, EPA held public hearings on the OTC's recommendation in Hartford, Connecticut on May 2–3, 1994. As previously announced, EPA will be holding a series of three public meetings in the OTR during June and July, 1994 to provide an opportunity for interactive discussion of the issues involved. As discussed in greater detail below, EPA is structuring these three public meetings to generally follow the framework for analysis it has described in its proposal for action on the OTC's recommendation.

At the first meeting, EPA expects the discussion to focus on the standard or test the Agency should apply in analyzing the OTC's recommendation and the need for the Agency to act in a timely fashion based on the best available information. Also at the first meeting, EPA expects the discussion to focus on issues related to the OTC LEV program, itself. At the second meeting, the Agency intends to take up the policy, legal, and technical issues relating to the magnitude of reductions needed, against which the OTC LEV program should be assessed. Also, at the second meeting EPA intends to begin a discussion of alternative proposals for obtaining additional emissions reductions from new cars. EPA expects this discussion may carry over into the third meeting. EPA also is reserving time at the third meeting to discuss new issues that might arise in the course of the foregoing agenda that EPA does not foresee now, or issues that should be revisited in light of later discussions.

DATES: EPA will be holding three public round-table meetings on: Wednesday, June 8, 1994 in Philadelphia, Pennsylvania; Thursday, June 23, 1994 in Durham, New Hampshire; and Wednesday, July 13, 1994 in New York, New York. Each round-table meeting will commence at 9 a.m. and conclude by approximately 6 p.m.

ADDRESSES: The first round-table meeting will be held at: Center City WHYY Television Station, Sixth & Arch Streets, Philadelphia, Pennsylvania.

The second round-table meeting will be held at: The New England Center, University of New Hampshire, 1515 Stratford Avenue, Durham, New Hampshire 03824.

The third round-table meeting will be held at: Holiday Inn Crown Plaza, Manhattan, 1605 Broadway (at 49th Street), New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, USEPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 260–3450.

SUPPLEMENTARY INFORMATION:

I. Organization of Public Meetings

EPA intends that the three public meetings will allow for a fruitful exchange of information and views among the various interested parties, the affected States, and EPA. The meetings will be organized as "roundtable" discussions. In order to promote an interactive discussion, EPA has retained a facilitator to direct discussions among the various parties. EPA will arrange for representatives of the various stakeholders, including the States, the auto manufacturers, other industry, and environmental interest groups, to be seated at a table with EPA. The facilitator will direct discussion first among these representatives. All members of the public are encouraged to attend and participate, and the public will have an opportunity to comment on the discussion of each discrete topic on the agenda.

EPA believes that an opportunity for public interactive discussions will provide a valuable opportunity for EPA to refine and synthesize information from individual participants relevant to its action on the OTC's recommendation. EPA is not, however, establishing the representatives invited to participate in the roundtable discussions as an advisory committee, and EPA is not seeking a group opinion or recommendation from these representatives.

II. Agendas for Discussion

EPA's announcement of its receipt and availability of the OTC's recommendation provides a short background discussion of the

recommendation and its context, 59 FR 12914 (March 18, 1994). EPA's recent notice of proposed rulemaking, 59 FR 21720 (April 26, 1994), provides a detailed description of the framework for EPA's action on the recommendation and the issues EPA is considering in reaching a decision. The reader should refer to these earlier notices for a full understanding of the OTC's recommendation and the issues EPA is interested in pursuing at the public meetings. Additional information may be obtained from the docket for this rulemaking (A–94–11), which includes a transcript of the May 2–3 public hearing held on EPA's notice of proposed rulemaking. The description of the agendas for the public meetings, below, presumes familiarity with these notices.

To allow participants to focus their attention and prepare for topics on the agenda in advance, the Agency is disinclined to substantially change these agendas. As the process advances, however, the Agency may make slight changes in light of new issues that may emerge or to proceed quickly through issues that may require less time and attention than originally scheduled.

A. First Meeting; Philadelphia, PA on June 8, 1994

At the first meeting, EPA intends the morning discussion to focus on the legal and policy aspects of the standard or test the Agency should apply in analyzing the OTC's recommendation. The Agency believes this is an overarching issue that should be addressed at the outset. Background for this topic can be found in EPA's proposal, 59 FR at 21725–27.

The agenda for the morning session is as follows:

Interpretation of "Necessity" Finding

1. Relevance of standard under Section 211(c)(4)(C).
2. Relevance of alternatives.
3. Criteria for alternatives: standards for cost-effectiveness, practicability and reasonableness.
4. Deference to the OTC and EPA's factual burden.
5. The need for a timely decision based on available information despite scientific uncertainty.

At the first meeting, EPA intends in the afternoon session to shift the discussion to focus on the recommended OTC LEV program, itself. Background information for this topic can be found in EPA's proposal, 59 FR at 21722–23, 21730–31, and 21734–36. EPA believes there are both important legal and policy, as well as technical aspects of the OTC LEV program that merit discussion. Of course, the Agency has an obligation to evaluate whether the recommended program is consistent with the Act. While many issues regarding the legality of an OTC LEV program have been the subject of litigation and may be addressed adequately in written submissions, EPA believes that discussion of certain issues would be helpful.

The agenda for the afternoon session is as follows:

OTC LEV

1. Required elements of an OTC LEV program for purposes of consistency with Sections 177 and 209.
2. Reductions from an OTC LEV program: what; where; when.
3. Cost-effectiveness of an OTC LEV program.
4. Assumptions about fuel used throughout the OTR, including attainment areas.
5. ZEV Component of OTC LEV
   - Is the ZEV sales mandate required to be part of the OTC LEV program?
   - Status of Electric Vehicle technology
   - Permutations on the ZEV Sales Mandate
   - Possible conditions or incentives for ZEVs (such as sales tax rebate or income tax credit).
   - Emissions impact of conditions or incentives for ZEVs in the absence of a sales mandate.
   - Consistency of conditions or incentives for ZEVs with Sections 177 and 209.

B. Second Meeting; Durham, NH on June 23, 1994

EPA intends the morning session to focus on the magnitude of reductions needed in assessing the OTC LEV program or alternatives. The Agency believes the amount of reductions that additional control measures must achieve for attainment is a threshold criterion for discussion. As noted in EPA's proposal, studies have consistently concluded that substantial reductions in NO_x and VOC emissions are likely to be necessary to reduce ozone to the 0.12 ppm NAAQS or below throughout the OTR during periods of adverse meteorological conditions. The best available information about the amount, location, timing, and type of these reductions may be important in assessing the need for the OTC's recommended LEV program. EPA recognizes the discussions regarding the magnitude of reductions needed involves legal, policy and technical aspects that are in many ways interrelated. EPA expects that all of these aspects will be addressed in the discussion of these issues. Background information for the legal and policy aspects of this topic can be found in EPA's proposal, 59 FR at 21727–30. Background information for the technical aspects of this topic can be found in EPA's proposal, 59 FR at 21730–31.

Also in the morning session, the Agency intends to provide an opportunity for discussion of whether alternative control measures are available to obtain sufficient emissions reductions so that more stringent emissions standards for new cars would not be necessary. This information could be relevant to the need for the OTC LEV program or a program to obtain similar reductions from new cars. As discussed in EPA's proposal, other measures may qualify as "alternatives" to LEV only if the other measures, singly or in combination, generate enough reductions to fill the entire shortfall needed without LEV. Background information for the alternatives topic can be found in EPA's proposal, 59 FR at 21733–34.

The agenda for the morning session is as follows:

Magnitude of Reductions

1. Location of needed reductions; relevance of contribution to downwind nonattainment, including discussion of requirements for attainment demonstration and relevance of boundary conditions.
2. Best current information regarding the OTR's needs for attainment, including timing of reductions for moderate, serious, and severe areas.
3. Need for reductions for maintenance.
4. Magnitude of motor vehicle emissions in the overall inventory.
5. Confidence in current technical tools and information.

Sufficiency of Alternatives that Might Render OTC LEV Unnecessary, Including Magnitude of Reductions Available, Cost, Practicability, and Reasonableness

In the afternoon session, EPA intends to begin discussion of alternative programs designed to reduce emissions from new motor vehicles. EPA recognizes that such alternatives designed to reduce emissions from new motor vehicles could conceivably constitute an "alternative" to OTC LEV. Such alternatives that obtain reductions from the same sources as the OTC LEV program would thus be, at least in part, redundant of the reductions that the OTC LEV program would generate. (If entirely redundant of OTC LEV reductions, the sufficiency of such an

alternative to fill the entire shortfall might arguably not be important.) EPA intends to begin discussion of such motor vehicle alternatives in the afternoon session.

As a threshold matter, EPA notes that its responsibility under Section 184 of the Act is to approve or disapprove the OTC's LEV recommendation, and that Section 184 does not appear to authorize EPA to mandate alternatives. Nevertheless, EPA believes that the emergence of another approach to obtaining emissions reductions from new vehicles might conceivably affect the need for the OTC LEV program.

EPA believes that threshold issues regarding such alternatives include how they might affect EPA's obligations regarding the OTC's recommendation now before EPA, and their legal consistency with Sections 177 and 209 of the Act. Thereafter, EPA expects that the discussion would turn to the specifics of the alternative proposals, which will carry over into the third meeting.

The Environmental Defense Fund (EDF) has presented one such alternative. Under EDF's approach, the auto manufacturers would be responsible for achieving reductions commensurate with those that the OTC LEV program would achieve, and could do so by selling cars meeting LEV standards or by trading emissions reduction credits among themselves or with stationary sources. EPA expects to begin discussion of this alternative in the afternoon session. EPA recognizes that it may be ambitious to cover this entire topic at the second meeting, and may have to resume discussion of it at the third meeting. Further information pertaining to EDF's proposal is available in EDF's comments and testimony in the public docket.

The agenda for the afternoon session is as follows:

Relevance of New Motor Vehicle Standards Alternatives to EPA's Obligation to Approve or Disapprove the OTC LEV Recommendation

1. Should EPA disapprove the OTC LEV recommendation based on proposals to change that program or on different, more stringent new motor vehicle standards (e.g. The EDF proposal or the auto manufacturers proposal, discussed below)?

2. Must there be a mechanism for EPA to be assured that the States will adopt the different approach, and if so what would that mechanism be?

EDF Trading Proposal

1. Mechanism for implementation.

2. Extent of trading: among auto companies; with stationary sources; across State boundaries.

3. Baseline for assessing whether reductions are surplus and can be traded to avoid otherwise applicable emissions reduction obligations.

4. Constraints on trading to ensure that areas reduce emissions that contribute to nonattainment downwind.

5. Need for discounting credits.

6. Role of ZEVs in a trading scheme.

7. Consistency with Sections 177 and 209.

C. Third Meeting; New York, NY on July 13, 1994

EPA intends to dedicate the third meeting to continued discussion of other proposals for obtaining additional emissions reductions from new motor vehicles or other sources. EPA intends to first complete any remaining carryover discussion of the EDF proposal from the second meeting. EPA intends to then continue with a discussion of the auto manufacturers' proposed alternative known as the Federal LEV or FLEV program. EPA's proposal describes this alternative, 59 FR at 21732–33.

Also in the morning session, the Agency intends to provide an opportunity for discussion of the proposal presented at EPA's May 2–3 public hearing by Texaco, Inc., Public Service Electric and Gas (PSE&G), and Merck & Company, Inc. Further information regarding this proposal is available in comments and testimony from these companies in the public docket.

EPA expects that time will be left at the end of the third meeting to address previously unidentified topics, alternatives or issues that were not raised earlier. In addition, EPA expects that issues addressed in the earlier meetings might be revisited at this time in light of later discussions.

The agenda for the third meeting is as follows:

FLEV Proposal

1. Enforceability.

2. SIP creditability.

3. Consistency with Sections 177 and 209.

4. Emissions reductions, and comparison with LEV emissions reductions, including timing.

5. EPA's authority to disapprove the OTC LEV recommendation based on an alternative that States apparently could not adopt in their SIPs or otherwise into State law.

NOx Cap Proposal from Texaco, PSE&G, and Merck

Additional Topics Not Previously Addressed or to be Revisited

Dated: May 24, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–13453 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4890–8]

Proposed Settlement; Acid Rain Core Rules Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Alabama Power Company, et al.*, v. *United States Environmental Protection Agency*, No. 93–1611 (D.C. Cir.), and a proposed partial settlement of *Environmental Defense Fund* v. *Carol M. Browner, et al.*, No. 93–1203 (and consolidated cases) (D.C. Cir.).

The first case involves a challenge to a statement set forth by EPA in the preamble of a proposed EPA action published in the **Federal Register** on July 16, 1933, entitled "Acid Rain Program: Notice of Draft Permits and Public Comment Period." 58 FR 38370 (July 16, 1993).

The second case involves challenges by several parties to the acid rain core rules published in the **Federal Register** on January 11, 1993, at 58 FR 3590 (January 11, 1993). The proposed settlement related principally to the substitution and reduced utilization provisions of the January 11, 1993 rules.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address

and must be submitted on or before July 5, 1994.

Dated: May 23, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–13454 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4891–1]

TechLaw, Inc.; Transfer of Data to Contractor

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to the United States Environmental Protection Agency (EPA) under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has contracted with TechLaw, Inc. as a primary contractor to perform work for EPA Region I (Contract No. 68–W4–0019). In order to do this work, the contractor will be provided access to certain information submitted to EPA under CERCLA section 104. Some of these materials may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to TechLaw, Inc. consistent with the requirements of 40 CFR 2.310(h)(2). Access to this information by TechLaw, Inc. is necessary for the performance of this contract.

DATES: Comments must be provided on or before June 7, 1994. The transfer of data submitted under CERCLA section 104 and claimed to be confidential will occur no sooner than 10 working days after publication of this notice in the Federal Register.

ADDRESSES: Comments should be addressed to LeAnn Walls, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, and should reference Sullivan's Ledge Superfund Site.

FOR FURTHER INFORMATION CONTACT: LeAnn Walls, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, (617) 565–4891.

SUPPLEMENTARY INFORMATION: TechLaw, Inc. will be performing work for EPA Region I regarding the Sullivan's Ledge Superfund Site litigation, *U.S.* v. *Federal Pacific Electronics, Inc., et al.*, including document preparation for litigation (bate stamping of documents, preparation of a final privilege list and quality control of EPA's site files). EPA Region I Waste Management Division has determined that, in order for the contractor to perform the work assigned, they will need access to information in EPA's files which has been claimed as CBI.

Pursuant to 40 CFR 2.310(h)(2), the contractor is legally required to safeguard this information from any unauthorized disclosure. In accordance with these regulations, EPA's contract with TechLaw, Inc. prohibits the use of the information for any purpose not specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from EPA, and requires the return to EPA of all copies of the information upon request by EPA, whenever the information is no longer required by the contractor for the performance of the contract, or upon completion of the contract. Each employee of the contractor who will have access to the information has been or will be required to sign a written agreement honoring the terms specified in the contract, before they have access to any confidential information. Pursuant to 40 CFR 2.310(h)(2), EPA is providing notice and an opportunity to comment to affected parties who have submitted CBI regarding this Site. These parties have five (5) business days from the publication of this Notice in which to comment on the anticipated release of this information to EPA's contractor.

Dated: May 16, 1994.

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 94–13451 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4890–7]

Hawaii: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Hawaii's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

Approved State permit programs provide interaction between the State and MSWLFs owners and operators regarding site-specific permit conditions. Only owners or operators located in States with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the Federal MSWLF criteria will apply to all permitted and unpermitted MSWLF facilities.

Hawaii applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Hawaii's application and issued for public comment a tentative determination that Hawaii's permit program is adequate to assure compliance with the revised MSWLF Criteria. Based on a thorough review of Hawaii's MSWLF program and the fact that no comments were received from the public, EPA is today issuing a final determination that Hawaii's MSWLF program is adequate.

EFFECTIVE DATE: The determination of adequacy for Hawaii shall be effective on June 2, 1994.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Greg Wilmore, mail code H–3–1, phone (415) 744–2093.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribal landfill permit programs.

EPA intends to approve State MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" permit programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974. Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

On October 8, 1993, Hawaii submitted an application for adequacy determination for Hawaii's MSWLF permit program. On March 7, 1994, EPA published a tentative determination of adequacy for all portions of Hawaii's MSWLF program. Further background on the tentative determination of adequacy appears at 59 FR 10644 (March 7, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received neither comments nor a request for a public meeting on this determination.

The State of Hawaii has the authority to enforce the requirements of its MSWLF program at all MSWLFs in the State.

B. Decision

In the tentative determination, EPA proposed to fully approve Hawaii's MSWLF program. Hawaii's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Hawaii is granted a determination of adequacy for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's MSWLF program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, 6949a(c).

Dated: May 10, 1994.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 94–13455 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL—4890–9]

South Dakota; Tentative Determination of Adequacy of State's Municipal Solid Waste Permit Program Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of the Rosebud Indian Reservations; Extension of Comment Period

AGENCY: Environmental Protection Agency (Region 8).

ACTION: Extension of comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258).

On April 7, 1994, the Environmental Protection Agency (EPA) issued in the **Federal Register** (59 FR 16647) a notice of tentative determination on application of the State of South Dakota for Program Adequacy Determination Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and parts of the Rosebud Indian Reservations. In order to provide additional opportunity for all interested parties to review and comment on this proposed action, EPA is extending the public comment period beyond the original June 2, 1994, date provided for in the April 7, 1994 **Federal Register** notice to July 1, 1994.

DATES: All comments on South Dakota's application for determination of adequacy must be postmarked by July 1, 1994.

ADDRESSES: Copies of South Dakota's application for adequacy determination are available from 8 a.m. to 4 p.m. at the following addresses for inspection and copying: South Dakota Department of Environment and Natural Resources, Office of Waste Management, Foss Building, 523 East Capitol, Pierre, South Dakota 57501; Yankton Sioux Indian Reservation, Chairman's Office, Marty, South Dakota; Rosebud Sioux Indian Reservation, Office of the Tribal Chairman, Office of Water Resources, Rosebud, South Dakota; Lake Traverse Indian Reservation, Sisseton-Wahpeton Dakota Nation, BIA/Tribal Administration Building, Office of the Tribal Chairman, Planning and Development Department, Agency Village, South Dakota; and U.S. EPA

Region 8 Library, 999 18th Street, First Floor, Denver, Colorado 80202–2466, telephone (303) 293–1444. Written comments should be sent to Ms. Judith Wong, Mail Code 8HWM–WM, U.S. EPA Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Judith Wong, Mail Code 8HWM–WM, Waste Management Branch, U.S. EPA Region 8, 999 18th Street, Denver, Colorado 80202–2466, telephone (303) 293–1667.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945 and 6949(a).

Dated: May 25, 1994.

Patricia Hull,

Acting Regional Administrator.

[FR Doc. 94–13449 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–59982; FRL–4870–6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 19 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–89, 94–90, 94–91, 94–92, May 9, 1994.

Y 94–93, 94–94, May 10, 1994.

Y 94–95, May 11, 1994.

Y 94–96, 94–97, May 12, 1994.

Y 94–98, May 16, 1994.

Y 94–99, 94–100, May 19, 1994.

Y 94–101, 94–102, 94–103, May 22, 1994.

Y 94–104, May 23, 1994.

Y 94–105, May 25, 1994.

Y 94–106, 94–107, May 26, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Non-Confidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–89

Manufacture. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (S) Polymer resin for file forming application craft turbine oil. Import range: Confidential.

Y 94–90

Manufacture. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (S) Polymer resin file forming application. Prod. range: Confidential.

Y 94–91

Importer. Royal Lubricant Company, Inc.

Chemical. (S) 2-propenoic acid, 2-methyl-, C_{9-18}-alkyl esters.

Use/Import. (S) Aircraft turbine oil. Import. range. Confidential.

Y 94–92

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (S) Siloxanes and silicones, di-me, hydrogen, hydrogen-terminated, poly(oxy-1,2-ethanediyl), a-methyl-a-(2-propenyloxy)-.

Use/Import. (S) Additive for adhesives and/or paints and surfactant for polyurethane foam. Import range: 1,000–3,000 kg/yr.

Y 94–93

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) All purpose resin in synthetic marble. Prod. range: Confidential.

Y 94–94

Manufacturer. C. J. Osborne, Div. of Suvar Corporation.

Chemical. (G) VT copolymer alkyd.

Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 94–95

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Coating for open, non-dispersive use in original equipment manufacture. Prod. range: Confidential.

Y 94–96

Manufacturer. Eastman Kodak Company.

Chemical. (G) Crosslinked product of a substituted benzene.

Use/Production. (G) Contained use in an article. Prod. range: Confidential.

Y 94–97

Manufacturer. Confidential.

Chemical. (G) Polymethacrylic acid, sodium salt.

Use/Production. (S) Water treatment cooling, water and boiler water conditioner, and pigment dispersant in coating and inks. Prod. range: Confidential.

Y 94–98

Manufacturer. Confidential.

Chemical. (G) Polymethacrylic acid, sodium salt.

Use/Production. (S) Water treatment cooling, water and boiler water conditioner, and pigment dispersant in coating and inks. Prod. range: Confidential.

Y 94–99

Importer. Takeda America, Inc.

Chemical. (G) Acrylated copolymer.

Use/Import. (G) Modified for plastics. Import range: Confidential.

Y 94–100

Manufacturer. Gor-Star, Inc.

Chemical. (S) 1,4-Butanediol; diethyl oxalate.

Use/Production. (S) Intermediate polymer for subsequent modification of commercial polyesters. Prod. range: 3,000–10,000 kg/yr.

Y 94–101

Manufacturer. Confidential.

Chemical. (G) Water-reducible alkyd.

Use/Production. (S) Clear and pigmented water-thinned finishes.Prod. range: Confidential.

Y 94–102

Manufacturer. Confidential.

Chemical. (G) Short oil soya alkyd.

Use/Production. (G) Baking or air-dry finishes for metal or wood fora single customer. Prod. range: Confidential.

Y 94–103

Manufacturer. Cargill, Incorporated.

Chemical. (G) Short oil alkyd.

Use/Production. (S) Baking finishes for wood or metal. Prod. range: Confidential.

Y 94–104

Importer. Confidential.

Chemical. (G) Rosin modified alkyd.
Use/Import. (G) Paint. Import range: Confidential.

Y 94–105

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester resin.
Use/Production. (S) Traffic paint resin. Prod. range: Confidential.

Y 94–106

Manufacturer. Goldschmidt Chemical Corporation.
Chemical. (G) Aliphatic polyurethane urea.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–107

Importer. Unitika America Corporation.
Chemical. (G) Co-polyester.
Use/Import. (G) Resin for powder coating. Import range: 20,000–30,000 kg/yr

List of Subjects

Environmental protection, Premanufacture notification.

Dated: May 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics

[FR Doc. 94–13432 Filed 6–1–94; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–51831; FRL–4776–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 150 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–376, 94–377, 94–378, 94–379, 94–380, 94–381, 94–382, 94–383, 94–384, 94–385, 94–386, 94–387, 94–388, 94–389, 94–390, 94–391, 94–392, 94–393, 94–394, 94–395, 94–396, 94–397, 94–398, 94–399, 94–400, February 28, 1994.

P 94–401, 94–402, 94–403, 94–404, March 1, 1994.

P 94–405, 94–406, 94–407, 94–408, 94–409, 94–410, March 2, 1994.

P 94–411, March 5, 1994.

P 94–412, March 2, 1994.

P 94–413, 94–414, March 5, 1994.

P 94–415, 94–416, 94–417, 94–418, 94–419, 94–420, 94–421, 94–422, 94–423, 94–424, 94–425, 94–426, 94–427, 94–428, March 6, 1994.

P 94–429, March 7, 1994.

P 94–430, March 2, 1994.

P 94–431, 94–432, 94–433, 94–434, 94–435, 94–436, March 7, 1994.

P 94–437, March 8, 1994.

P 94–438, 94–439, 94–440, March 9, 1994.

P 94–441, March 12, 1994.

P 94–442, 94–443, 94–444, 94–445, 94–446, 94–447, 94–448, 94–449, 94–450, 94–451, 94–452, 94–453, 94–454, 94–455, 94–456, March 13, 1994.

P 94–457, 94–458, 94–459, 94–460, 94–461, 94–462, 94–463, March 14, 1994.

P 94–464, 94–465, 94–466, 94–467, 94–468, March 15, 1994.

P 94–469, 94–470, March 16, 1994.

P 94–471, 94–472, March 19, 1994.

P 94–473, 94–474, 94–475, 94–476, 94–477, 94–478, 94–479, 94–480, 94–481, 94–482, 94–483, 94–484, 94–485, 94–486, 94–487, 94–488, March 20, 1994.

P 94–489, 94–490, 94–491, March 19, 1994.

P 94–492, 94–493, 94–494, 94–495, 94–496, March 21, 1994.

P 94–497, March 22, 1994.

P 94–498, March 26, 1994.

P 94–499, March 29, 1994.

P 94–500, March 26, 1994.

P 94–501, March 27, 1994.

P 94–502, 94–503, March 28, 1994.

P 94–504, 94–505, March 29, 1994.

P 94–506, 94–507, 94–508, 94–509, April 2, 1994.

P 94–510, 94–511, 94–512, 94–513, 94–514, 94–515, 94–516, 94–517, 94–518, 94–519, 94–520, 94–521, 94–522, 94–523, 94–524, 94–525, April 3, 1994.

Written comments by:

P 94–376, 94–377, 94–378, 94–379, 94–380, 94–381, 94–382, 94–383, 94–384, 94–385, 94–386, 94–387, 94–388, 94–389, 94–390, 94–391, 94–392, 94–393, 94–394, 94–395, 94–396, 94–397, 94–398, 94–399, 94–400, January 29, 1994.

P 94–401, 94–402, 94–403, 94–404, January 30, 1994.

P 94–405, 94–406, 94–407, 94–408, 94–409, 94–410, January 31, 1994.

P 94–411, February 3, 1994.

P 94–412, January 31, 1994.

P 94–413, 94–414, February 3, 1994.

P 94–415, 94–416, 94–417, 94–418, 94–419, 94–420, 94–421, 94–422, 94–423, 94–424, 94–425, 94–426, 94–427, 94–428, February 4, 1994.

P 94–429, February 5, 1994.

P 94–430, January 31, 1994.

P 94–431, 94–432, 94–433, 94–434, 94–435, 94–436, February 5, 1994.

P 94–437, 94–438, February 6, 1994.

P 94–439, 94–440, February 7, 1994.

P 94–441, February 10, 1994.

P 94–442, 94–443, 94–444, 94–445, 94–446, 94–447, 94–448, 94–449, 94–450, 94–451, 94–452, 94–453, 94–454, 94–455, 94–456, February 11, 1994.

P 94–457, 94–458, 94–459, 94–460, 94–461, 94–462, 94–463, February 12, 1994.

P 94–464, 94–465, 94–466, 94–467, 94–468, February 13, 1994.

P 94–469, 94–470, February 14, 1994.

P 94–471, 94–472, February 17, 1994.

P 94–473, 94–474, 94–475, 94–476, 94–477, 94–478, 94–479, 94–480, 94–481, 94–482, 94–483, 94–484, 94–485, 94–486, 94–487, 94–488, February 18, 1994.

P 94–489, 94–490, 94–491, February 17, 1994.

P 94–492, 94–493, 94–494, 94–495, 94–496, February 19, 1994.

P 94–497, February 20, 1994.

P 94–498, February 24, 1994.

P 94–499, February 27, 1994.

P 94–500, February 24, 1994.

P 94–501, February 25, 1994.

P 94–502, 94–503, February 26, 1994.

P 94–504, 94–505, February 27, 1994.

P 94–506, 94–507, 94–508, 94–509, March 3, 1994.

P 94–510, 94–511, 94–512, 94–513, 94–514, 94–515, 94–516, 94–517, 94–518, 94–519, 94–520, 94–521, 94–522, 94–523, 94–524, 94–525, March 4, 1994.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51831]" and the specific PMN number should be sent to: Document Control Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington DC 20460 (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received

by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEB–607 at the above address between 12 and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–376

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ethylene diamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–377

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, sodium salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–378

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl, polyol, trialkyl derivative ester, potassium salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–379

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, dimethylethanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–380

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ammonium salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–381

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl trialkyl derivative ester, monoethanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–382

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, diethanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–383

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, triethanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–384

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, morpholine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–385

Manufacturer. AKZO Coating, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, diethanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–386

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-amino-2 methyl-propanol salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–387

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-amino-2 methyl-propanol salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–388

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-dimethylamino-2 propanol salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–389

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, urea salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–390

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialky derivative ester, diethylamine salt.

Use/Production. (G) Prining ink and coatings. Prod. range: Confidential.

P 94–391

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, triethylamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–392

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, *N*-propylamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–393

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, di isopropanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–394

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, tri isopropanolamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–395

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, polyol, trialkyl derivative ester, trimethylamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–396

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ethylene diamine salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–397

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, sodium salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–398

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, potassium salt.

Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–399

Manufacturer. AKZO Coatings, Inc.

Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol,

trialkyl derivative ester, dimethylethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–400

Manufacturer. Confidential.
Chemical. (G) Dialkylsulfosuccinate.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 94–401

Manufacturer. Confidential.
Chemical. (G) Substituted bis(phenyl)isobenzofuranone.
Use/Production. (G) Intermediate used in the manufacture of a component or paper coatings. Prod. range: Confidential.

P 94–402

Manufacturer. Confidential.
Chemical. (G) Substituted bis(methylphenyl)isobenzofuranone.
Use/Production. (G) Intermediate used in manufacture of a component for paper coatings. Prod. range: Confidential.

P 94–403

Manufacturer. Confidential.
Chemical. (G) Amine terminated epoxy polymer.
Use/Production. (G) Polymer curative. Prod. range: Confidential.

P 94–404

Manufacturer. Confidential.
Chemical. (G) Amine terminated epoxy polymer.
Use/Production. (G) Polymer curative. Prod. range: 4,000–8,000 kg/yr.

P 94–405

Importer. Confidential.
Chemical. (G) Oxirane, polymer with methyl/oxirane, phthalate anhyride, dimer acid, 2-propenoic acid, alkyl tetrakisol.
Use/Import. (G) Component for specialty industrial coatings, inks and adhesives. Import range: Confidential.

P 94–406

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–407

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–408

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–409

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–410

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–411

Manufacturer. Agrisense Division of Biosys.
Chemical. (S) 1, (E/Z)-9-Dodecadiene.
Use/Production. (S) Chemical intermediate in synthesis of insect pheromones. Prod. range: 1,000–10,000 kg/yr.

P 94–412

Importer. Hach Company.
Chemical. (S) 5-Bromo-4-chloro-3-indolyn-beta-*D* glucuronic acid, cyclohexylammonium salt.
Use/Import. (S) Detector for *E.coli* in micro medium. Import. range: 1–10 kg/yr.

P 94–413

Importer. Aceto Corporation.
Chemical. (G) Complex of amino naphthalene disulfonic acid.
Use/Import. (S) Detector for *E.coli* in micro medium. Import. range: 1–10 kg/yr.

P 94–414

Manufacturer. Amoco Corporation.
Chemical. (G) Modified polyphenylsulfone.
Use/Production. (G) Manufacture of molded parts and coating for wires. Prod. range: Confidential.

P 94–415

Manufacturer. Minnesota Mining & Manufacturing Company.
Chemical. (G) 1,1-Methylene bis(isocyanatobenzene) polymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 94–416

Manufacturer. Confidential.
Chemical. (G) Succinimide-zinc sulfonate complex.
Use/Production. (G) Emulsifier. Prod. range: Confidential.

P 94–417

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Final product synthesis. Prod. range: 300,000–600,000 kg/yr.

P 94–418

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 480,000–720,000 kg/yr.

P 94–419

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 480,000–720,000 kg/yr.

P 94–420

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Spray applied coatings. Prod. range: 120,000–240,000 kg/yr.

P 94–421

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Spray applied coatings. Prod. range: 120,000–240,000 kg/yr.

P 94–422

Manufacturer. Confidential.
Chemical. (G) Branched synthetic fatty acid.
Use/Production. (G) Industrial lubricant raw material. Prod. range: Confidential.

P 94–423

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols C_{10-16} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–424

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols, C_{8-10} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–425

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols, C_{9-11} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–426

Importer. H.W. Sands Corporation.
Chemical. (S) 2-(4-Dimethylcarbomoyl-pyridino)-ethanol-1-sulfonate.

Use/Import. (S) Intermediate for fatty alcohol purification. Import range: 600,000 kg/yr.

P 94–427

Manufacturer. Henkel Corporation.

Chemical. (G) Polyether polyester urethane.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 94–428

Manufacturer. Resinall Corporation.

Chemical. (G) Hydrocarbon modified rodin resin.

Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 94–429

Manufacturer. Confidential.

Chemical. (G) Polyurethane/urea polymer dispersion.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–430

Manufacturer. Confidential.

Chemical. (G) Resorcinol/formaldehyde polymer, monopotassium salt.

Use/Production. (S) Ion exchange resin. Prod. range: 12,000–20,000 kg/yr.

P 94–431

Manufacturer. Confidential.

Chemical. (S) 2,4-Diisocyanato-methyl benzene; hydroxyethyl acrylate; furan, tetrahydro-3-methyl polymer with tetrahydrofuran.

Use/Production. (S) Component of an industrial coating that cures under exposure to ultraviolet light or electron beam. Prod. range: Confidential.

P 94–432

Manufacturer. Confidential.

Chemical. (G) Alkanolamines, reaction products with polymerized rosin.

Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–433

Manufacturer. Confidential.

Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.

Use/Production. (G) Tackifier. Prod. range: Confidential.Confidential.

P 94–434

Manufacturer. Confidential.

Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.

Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–435

Manufacturer. Confidential.

Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.

Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–436

Manufacturer. Confidential.

Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.

Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–437

Importer. MTC America, Inc.

Chemical. (G) Isocyanate.

Use/Import. (S) Application: spectacle lenses with isocyanate compound for polyurethane and paint. Import. range: Confidential.

P 94–438

Importer. MTC America, Inc.

Chemical. (G) Thia alkanethiol.

Use/Import. (S) Application: spectacle lenses with thio compound for polythiourethane. Import. range: Confidential.

P 94–439

Manufacturer. Loctite Corporation.

Chemical. (G) (Alkyl-substituted propenoate)-terminated alkyl and alkoxy substituted siloxanes.

Use/Production. (S) A comment in additive and sealant formulation malusite limited chemical intermediate. Prod. range: Confidential.

P 94–440

Manufacturer. Loctite Corporation.

Chemical. (S) A complex reaction mixture consisting of the following: Siloxanes and silicones, di-me, mono-hydroxy terminated; siloxanes and silicones, di-me, hydroxy terminated; siloxanes and silicones, di-me.

Use/Production. (S) A site limited chemical intermediate. Prod. range: 2,000–10,000 kg/yr.

P 94–441

Importer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Benzothiazole-based dye.

Use/Import. (G) Dye for graphic artsfilm, Open, non-dispersive use. Import range: Confidential.

P 94–442

Manufacturer. Confidential.

Chemical. (G) Pentaerythritol tetraesters with straight-chain and fatty acids.

Use/Production. (G) Synthetic aircraft engine lubricant for contained use. Prod. range: Confidential.

P 94–443

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–444

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–445

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–446

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–447

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethanes based on polyisocyanates polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–448

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–449

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamine.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–450

Manufacturer. Confidential.

Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.

Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–451

Manufacturer. Confidential.
Chemical. (G) Phosphonate.
Use/Production. (G) Scale inhibitor. Prod. range: Confidential.

P 94–452

Manufacturer. Confidential.
Chemical. (G) Silica-supported transition metal complex.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 94–453

Manufacturer. Confidential.
Chemical. (G) Silica supported trsnsition mental complex.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 94–454

Manufacturer. Confidential.
Chemical. (G) Polyol terminated urethane.
Use/Production. (G) Urethane prepolymer. Prod. range: 6,000–7,500 kg/yr.

P 94–455

Importer. BASF Corporation.
Chemical. (S) 1,5-Pentane diamine, 2-butyl-2-ethyl-.
Use/Import. (S) Hardener for epoxy systems. Import range: 1,000–10,000 kg/yr.

P 94–456

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted methane derivative, acetate salt.
Use/Import. (S) Paper dye for tissue, nonwoven, box board and fine paper. Import range: Confidential.

P 94–457

Manufacturer. Confidential.
Chemical. (G) Hydroxyl terminated aryl alkyl polyester resin.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

P 94–458

Manufacturer. Confidential.
Chemical. (G) Acrylic grafted poly (amide-ester).
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 94–459

Manufacturer. Confidential.
Chemical. (S) Modified polymeric diphenylmethane diisocyanate prepolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 94–460

Importer. Confidential.
Chemical. (G) Phosphoric acid fatty alcohol polyethyleneglycol ester.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–461

Importer. Confidential.
Chemical. (G) Aliphatic amine.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–462

Importer. Confidential.
Chemical. (G) Polyimine.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–463

Importer. Confidential.
Chemical. (G) Polyimine.
Use/Import. (G) Open, non-dispersive use. Import range: confidential.

P 94–464

Importer. Ciba-Geigy Corporation.
Chemical. (G) Ttriaryl sodium salt of antimony hexafluoride.
Use/Import. (G) Initiator for epoxy polymerization. Import range: 10–100 kg/yr.

P 94–465

Manufacturer. Confidential.
Chemical. (G) Metallated polystyrene.
Use/Production. (G) Contained use additive for gas treatment. Prod. range: Confidential.

P 94–466

Importer. Confidential.
Chemical. (G) Cresol novolac resin.
Use/Import. (G) Material for lithography. Import range: confidential.

P 94–467

Importer. Confidential.
Chemical. (G) Substituted benzophenone ester.
Use/Import. (G) Material for lithography. Import range: Confidential.

P 94–468

Importer. Confidential.
Chemical. (G) Cresol novolac ester.
Use/Import. (G) Naterial for lithography. Import range: Confidential.

P 94–469

Manufacturer. E.I. du Pont de Nemours & Company.
Chemical. (G) Polysubstituted methacrylic copolymer latex.
Use/Production. (G) Fabric finish - open, non-dispersive use. Prod. range: Confidential.

P 94–470

Manufacturer. Max Marx Color Company.
Chemical. (G) Ethanethylamium, *N*-((4-diethylaminplphenyl)(4-ethylamino)-1-naphthalenyl)=methylene-2,5-cyclohexadien-1-=ylidene)-*N*-ethyl-, copper(1+) (oc-6-11)-hexakis(cyano-c')=ferrate (4-) (2:2:1).
Use/Production. (S) A pigment used in water-base inks. Prod. range: 15,000–20,000 kg/yr.

P 94–471

Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid Prod. range: Confidential.

P 94–472

Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid Prod. range: Confidential.

P 94–473

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–474

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–475

Manufacturer. Confidential.
Chemical. (G) Crossliked butyl rubber
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–476

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–477

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–478

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–479

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–480

Manufacturer. Confidential.

Chemical. (G) Saccharide derivative.

Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–481

Manufacturer. Confidential.

Chemical. (G) Saccharide derivative.

Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–482

Manufacturer. Confidential.

Chemical. (G) Saccharide derivative.

Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–483

Manufacturer. Confidential.

Chemical. (G) Saccharide derivative.

Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–484

Manufacturer. Confidential.

Chemical. (G) Saccharide derivative.

Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–485

Manufacturer. Olin Corporation.

Chemical. (G) Alcohol alkoxylate.

Use/Production. (G) Surfactant. Prod. range: 303,030–3,909,090.91 kg/yr.

P 94–486

Manufacturer. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–487

Manufacturer. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–488

Manufacturer. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–489

Importer. Confidential.

Chemical. (G) Alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl),polymer with 2-hydroxyethyl ether, 2,2'- oxydiethanol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 5-isocyanato-1-(isocyanatomethyl)- 1,3-trimethyl cyclohexane, 2-propenoic acid, 2-hydroxyethyl ester, adipic acid, 2-oxepanone, and isophthalic acid derivative.

Use/Import. (G) Polymer component for specialty industrial coatings, inks, and adhesives. Import range: Confidential.

P 94–490

Importer. Confidential.

Chemical. (G) 2-Propenoic acid, 2-hydroxyethyl ester polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and poly(alkylene ether) glycol.

Use/Import. (G) Polymer component for specialty industrial coatings. inks,and adhesives: Import range: Confidential.

P 94–491

Importer. Confidential.

Chemical. (G) Alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, adipic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-propenoic acid, 2-Hydroxyethyl ester, 2-hydroxyethyl ether, 2,2'-oxydiethanol, and isophthalic acid derivative.

Use/Import. (G) Polymer component for specialty industrial coatings, inks, and adhesives. Import range: Confidential.

P 94–492

Manufacturer. Exxon Chemical Company.

Chemical. (S) 1,2,4-Benzene tricarboxylic acid, tris(nonyl) ester, branched and linear.

Use/Import. (G) Plasticizer. Prod. range: Confidential.

P 94–493

Importer. The Goodyear Tire & Rubber Company.

Chemical. (G) Acrylonitrile/styrene/acrylate rubber.

Use/Import. (S) Rubber modified for thermoplastics. Import. rangr: 200,000–1,000,000.

P 94–494

Importer. Enthone-OMI, Inc.

Chemical. (G) Substituted pyridine.

Use/Import. (G) Used in gold plating process. Import range: Confidential.

P 94–495

Importer. Enthone-OMI, Inc.

Chemical. (G) Aralkyl-nitrogen heterocycle.

Use/Import. (G) Polymer component for specialty industrial coatings,inks, and adhesives. Import range: Confidential.

P 94–496

Importer. Confidential.

Chemical. (G) 2-Propenoic acid reaction products with oxirane, methyl oxirane, and alkyl terakisol.

Use/Import. (G) Component for specialty industrial coatings, inks. and adhesives.

P 94–497

Manufacturer. E.I. du Pont de Nnemours & Ccompany.

Chemical. (G) Hydrofluorocarbon.

Use/Production. (S) Refrigerant: formning agent for plastic foams; invet vehicle for sterilants; fire extinguishant

P 94–498

Manufacturer. Confidential.

Chemical. (G) Acid functional polyester.

Use/Production. (G) Dispersively applied binder resin. Prod. range: 31,000–150,000 kg/yr.

P 94–499

Importer. Ciba-Geigy Corporation.

Chemical. (G) Substituted azo metal complex dye.

Use/Import. (G) Textile dye. Import range: Confidential.

P 94–500

Manufacturer. Confidential.

Chemical. (G) Plant extract.

Use/Production. (G) Raw material for use in fragrances (perfumes and colognes) raw material for use in fragrances for soap). detergents and household products.

P 94–501

Manufacturer. The Dow Chemical Company.

Chemical. (G) Brominated aromatic hydrocarbon.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–502

Manufacturer. Rhone-Poulenc, Inc.

Chemical. (G) Vinyl copolymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 94–503

Manufacturer. Shell Oil Company.

Chemical. (G) Brominated epoxy resin.

Use/Production. (S) Printed circuit laminated miscellaneous industrial application. Prod. range: Confidential.

P 94–504

Importer. Confidential.

Chemical. (S) Polyether polyol; diisocyanate diamine; monoisocyanate.

Use/Production. (S) A breakable water proof coating for textile fabrics. Prod. range: Confidential.

P 94–505

Manufacturer. Confidential.

Chemical. (G) Aqueous polyurethane dispersion.

Use/Production. (S) A protective coating for fabric, leather and other flexible substrates. Prod. range: Confidential.

P 94–506

Manufacturer. Henkel Corporation.

Chemical. (G) Alkyl polyether carboxylic acid ester.

Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–507

Manufacturer. Henkel Corporation.

Chemical. (G) Alkyl polyether carboxylic acid ester.

Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–508

Manufacturer. Henkel Corporation.

Chemical. (G) Alkyl polyether carboxylic acid ester.

Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–509

Manufacturer. Henkel Corporation.

Chemical. (G) Alkyl polyether carboxylic acid ester.

Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–510

Importer. Confidential.

Chemical. (G) Hydroxy acrylic polymer.

Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–511

Manufacturer. Owens-Corning.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Molding resin. Prod. range: Confidential.

P 94–512

Manufacturer. Confidential.

Chemical. (G) Tannin, sodium salt, polymer with acrylic monomers.

Use/Production. (S) Cement additive for oil and gas wells. Prod. range: Confidential.

P 94–513

Importer. Ciba-Geigy Corporation.

Chemical. (G) Phenolic derivative.

Use/Production. (S) Light stabilizer absorber for automobile coatings. Import range: Confidential.

P 94–514

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives.Prod range: Confidential.

P 94–515

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–516

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy resin.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–517

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–518

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–519

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–520

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–521

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–522

Manufacturer. Confidential.

Chemical. (G) Unsaturate epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–523

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–524

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–525

Manufacturer. Confidential.

Chemical. (G) Unsaturated epoxy ester.

Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: May 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–13433 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Industry Advisory Committee for WRC–95

Released: May 20, 1994.

Upon approval from OMB pursuant to E.O. 12838, the FCC proposes to establish an advisory committee for preparations for WRC–95. The proposed date of its first meeting will be May 31, 1994. The Federal Communications Commission intends to establish an Advisory Committee for the 1995 World Radiocommunication Conference (WRC–95 Advisory Committee). This committee would advise the FCC staff on topics relating to preparations for WRC–95. The committee would develop and present proposals and positions on topics to be addressed at WRC–95. The FCC believes establishment of the committee is in the public interest.

This notice also advises interested persons of the tentative proposed date of the initial meeting of the WRC–95 Advisory Committee.

TENTATIVE DATE: May 31, 1994; 8:30–11:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., room 856, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The WRC–95 Advisory Committee is intended to provide to the agency advice, technical support and recommendations relating to preparation of U.S. proposals and positions for the 1995 World Radiocommunication Conference.

AGENDA: The planned agenda for the proposed first meeting is as follows:

1. Introductions and Welcoming Remarks
2. Approval of Agenda
3. Committee Charter and other Administrative Matters
4. WRC–93 Conclusions: Agendas for WRC–95 and WRC–97
5. Work Program
6. Organization of Work
7. Meeting Schedule
8. Agenda for Next Meeting
9. Other Business

The Advisory Committee will have an open membership, and all interested parties will be invited to participate. This policy will ensure a balanced membership and adequate representation of women and minority members.

A formal notice of establishment and first meeting notice will be issued immediately following OMB approval.

FOR FURTHER INFORMATION CONTACT: Thomas M. Walsh (202–632–0935), or Cecily C. Holiday (202–634–1629).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13327 Filed 6–1–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Delegations of Authority With Respect to Undercapitalized Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: FDIC has delegated limited authority to its Executive Director for Supervision and Resolutions and/or its Director, Division of Supervision (DOS), to determine that action other than appointing a receiver would better achieve the statutory purpose of minimizing long-term loss to the deposit insurance fund from resolving the problems of insured depository institutions and to make certain other determinations relating to prompt corrective action.

FOR FURTHER INFORMATION: Jesse G. Snyder, (202) 898–6915, Assistant Director, Operations Branch, Office of Supervision and Applications, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Effective December 19, 1992, section 38(h)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(h)(3)) mandates appointment of a receiver not later than 90 days after an institution becomes critically undercapitalized unless the appropriate regulator, with FDIC concurrence, determines that an alternative course of action "would better achieve the purpose of [section 38 to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund]". Such a determination is valid for up to 90 days and may be reinstated for additional periods of up to 90 days by new determinations properly documented. After one year a receiver must be appointed unless the head of the appropriate regulatory agency and the Chairperson of the FDIC certify that "the institution is viable and not expected to fail" and the institution also meets four other specific criteria.

Section 38 also permits the appropriate federal banking agency of an undercapitalized institution to determine not to take certain otherwise mandated corrective actions under subsection (f) if to do so would not further the purpose of section 38.

II. Delegation of Authority

A. Deferring Appointment of Receiver

In connection with the resolution of critically undercapitalized institutions, there are certain cases where it is appropriate to extend the 90-day receivership deadline, such as where the chartering authority or appropriate federal banking agency sets a resolution date beyond the deadline in order to accommodate the information gathering needs required to facilitate an orderly resolution. Another example might be an institution with a promising recapitalization in progress which will not be fully effected prior to the deadline but has a good chance of being successful. It is appropriate that such matters be acted on at the staff level, under delegated authority, with respect to the first determination to defer the appointment of a receiver for up to 90 days for a particular institution. Accordingly, the Board has delegated authority to the Executive Director for Supervision and Resolutions, the Director, DOS, and where confirmed in writing by the Director, to an associate director, to make determinations under section 38(h)(3)(A)(ii) with respect to institutions for which the FDIC is the appropriate federal banking agency, and to affirmatively concur with actions thereunder by other appropriate federal banking agencies, as to any action in lieu of appointing a receiver for a critically undercapitalized institution.

This delegated authority does not extend to actually appointing a conservator or a receiver under section 38(h)(3)(A)(i), or to concurring therein, and also does not include authority to grant or concur in more than one deferral per institution or to withhold FDIC concurrence with respect to any action taken under section 38(h)(3)(A) by an appropriate federal banking agency in lieu of appointing a receiver. Each action under delegated authority will be documented in writing, setting forth how deferring the appointment of a receiver or conservator for the initial 90-day period will minimize long-term loss to the deposit insurance fund.

B. Waiver of Certain Corrective Actions

Section 38(f) requires that at least the following three types of specific action be taken against critically and significantly undercapitalized institutions, as well as against undercapitalized institutions which have failed to submit and implement an acceptable capital restoration plan, unless the agency determines that the actions would not further the purpose of section 38: (1) Requiring the sale of securities or consolidation with another institution; (2) requiring compliance with section 23A of the Federal Reserve Act without benefit of the exemption therein for transactions with certain affiliated institutions; and (3) restricting the interest rates paid on deposits to prevailing rates. Where, for example, a near-term resolution or recapitalization of an institution is anticipated, the pursuit of such formal actions against an institution would not normally minimize loss to the insurance fund. In those and other cases, making such determinations would be appropriately delegable to staff. Accordingly, the Board has delegated such authority under section 38(f)(3) to the Executive Director for Supervision and Resolutions, the Director, DOS, or an associate director designated in writing by such Director. Each such action under delegated authority must be documented in writing, clearly setting forth the reasons therefor.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of May 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–13365 Filed 6–1–94; 8:45 am]

BILLING CODE 6714–01–P

Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of amendment to an existing system of records—"Confidential Employee Financial Disclosure Statement System" (formerly "Employee Financial Disclosure Statement System").

SUMMARY: As part of an ongoing examination of the FDIC's systems of records, the "Employee Financial Disclosure Statement System" has been reviewed for compliance with the Privacy Act of 1974, 5 U.S.C. 552a. Numerous minor amendments have been made that will clarify and/or more accurately describe the following categories in this system of records: System name, system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, retrievability, and retention and disposal.

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, FDIC, 550–17th Street NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Employee Financial Disclosure Statement System" is being amended to clarify and/or more accurately describe its contents. These modifications include changing the system name to the "Confidential Employee Financial Disclosure Statement System," updating titles of existing forms and sources of authority, and rewording descriptions of the contents of existing forms. Additionally, the description of individuals covered by the system specifically includes prospective employees in order to extend system coverage to those individuals under consideration for positions identified in 5 CFR 2634.904 who are required to file a Confidential Financial Disclosure Report as authorized by 5 CFR 2634.903(b)(3). This refinement has been coordinated with and approved by the Office of Government Ethics. Finally, the description of retention and disposal procedures is expanded to delineate the retention and disposal procedures for the records of prospective employees who are not selected for employment and to clarify that disposal of information in automated computer files is by deletion.

Accordingly, the Board of Directors of the FDIC amends the "Employee Financial Disclosure Statement System" to read as follows:

FDIC 30–64–0006

SYSTEM NAME:

Confidential Employee Financial Disclosure Statement System.

Note: Complete text appears at 46 FR 45687, Sep. 14, 1981; amended at 47 FR 42162, Sep. 24, 1982; amended at 53 FR 48039, Nov. 29, 1988.

SYSTEM LOCATION:

Records are located in designated divisions and offices, and regional and consolidated offices, to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. A list of the system locations is available from the Ethics Section, Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and, in the case of item (1) below, prospective FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Financial Disclosure Report; (2) Confidential Report of Indebtedness; (3) Confidential Report of Interest in FDIC-Insured Depository Institution Securities; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of Standards of Conduct Regulation and Presidential Executive Orders; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Order 12674, as modified by Executive Order 12731, 5 CFR part 2634, 5 CFR part 2635, 5 CFR part 3202, and 12 CFR part 336—Subpart C, or any successor regulation thereto:

(1) Confidential Financial Disclosure Report—contains statements of personal and family holdings, interests in business enterprises and real property, creditors, and outside employment.

(2) Confidential Report of Indebtedness—contains information on extensions of credit (loans and credit cards) by FDIC-insured depository institutions or any affiliates or subsidiaries of FDIC-insured depository institutions; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured banks or affiliates thereof.

(3) Confidential Report of Interest in FDIC-Insured Depository Institution Securities—contains a brief description of an employee's direct or indirect interest in the securities of an FDIC-insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; a brief description of an employee's direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC-insured depository institution, affiliate, or depository institution holding company; and a certification acknowledging that the employee has read and understands the rules governing the ownership of securities in FDIC-insured depository institutions.

(4) Confidential Report of Employment Upon Resignation—contains information as to the employee's prospective employer, the nature of the business or organizational activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, if any, with the prospective employer.

Note: Information is no longer collected on this form. However, previously collected records continue to be maintained for six years from the date of filing. All such records will be destroyed by 1997 except for any which may be involved in an ongoing investigation.

(5) Employee Certification and Acknowledgement of Standards of Conduct Regulation and Presidential Executive Orders—contains employee's certification and acknowledgement that he or she: has received a copy of the Standards of Ethical Conduct for Employees of the FDIC, including Part I of Executive Order 12674, 5 CFR part 2635, and 12 CFR part 336—Subpart C, or any other supplemental regulations; has been provided a minimum of one hour of official time to review them; has been advised of the names, titles, office locations, and telephone numbers of ethics officials responsible for answering ethics questions; and has a positive responsibility to comply with the standards of conduct.

(6) Confidential Statement of Credit Card Obligation in Insured State

Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification—for Division of Supervision employees, identifies FDIC-insured State nonmember depository institutions outside the employee's region of assignment from which a credit card was obtained, and employee certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed $10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p.215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p.306; 5 CFR 2634.103.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Indexed by name, and, in the Office of the Executive Secretary, on an automated system also indexed by name. The automated system does not index the names of prospective employees who are not selected for employment.

* * * * *

RETENTION AND DISPOSAL:

Records concerning prospective employees who are not selected for employment are retained for one year and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. All other records are retained for six years and then destroyed by shredding (entries from automated computer index are deleted) except that documents and computer index entries needed in an ongoing investigation will be retained until no longer needed in the investigation.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this 24th day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–13367 Filed 6–1–94; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1022–DR]

Amendment to Notice of a Major Disaster Declaration; TN

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1022–DR), dated April 14, 1994, and related determinations.

EFFECTIVE DATE: May 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee dated April 14, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 14, 1994:

McMinn County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–13393 Filed 6–1–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 10 a.m.
Date: June 14, 1994.
Place: Fourth Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H. Street NW., Washington, DC
Status: Open.
Matters to be Considered: Approval of the minutes of the November 10, 1993, meeting; report of the Executive Director on the status of the Thrift Savings Plan; Thrift savings Plan open season activities; participant actions during recent volatile market; additional Thrift Savings Plan investment funds update; proposals to cut Thrift Savings Plan match; implementation of Public Law 103–226; and new business.

Any interested person may attend, appear before, or file statements with the Council For further information contact John J. O'Meara, Committee Management Officer, on (202) 942–1662.

Date: May 26, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–13369 Filed 6–1–94; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File Nos. 912 3248; 912 3295; 922 3001; 922 3002]

Beverly Hills Weight Loss Clinics International, Inc.; Doctors Medical Weight Loss Centers, Inc., et al.; Quick Weight Loss Centers, Inc., et al. (Texas); Quick Weight Loss Centers, Inc., et al. (Georgia); Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the four consent agreements, accepted subject to final Commission approval, would prohibit, among other things, four commercial diet program companies and their officers from misrepresenting the performance or safety of any diet program they offer in the future, and would require the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Kelly or Eric Bash, FTC/H–200, Washington, DC 20580. (202) 326–3304 or 326–2892 or Gary Cooper, FTC/Boston Regional Office, 101 Merrimac St., suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of Practice (16 CFR 2.34), notice is hereby given that the following consent

agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(B)(6)(ii)).

In the Matter of Beverly Hills Weight Loss Clinics International, Inc., a corporation. File No. 912–3248.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Beverly Hills Weight Loss Clinics International, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between Beverly Hills Weight Loss Clinics International, Inc., by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Beverly Hills Hills Weight Loss Clinics International, Inc. ("Beverly Hills"), is a Virginia corporation, with its office and principal place of business located at 200 Highpoint Avenue, suite B–5, Portsmouth, Rhode Island 02871.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information pubic in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it was be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made *clearly and prominently* or in a *clear and prominent* manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or large type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently" or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. *A short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It Is Ordered that respondent, Beverly Hills Weight Loss Clinics International, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of

all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; provided further, that respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program, provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Beverly Hills makes no claim that this [these] result[s] is [are] representative of all participants in the Beverly Hills program.";

Provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our clinics for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

For many dieters, weight loss is temporary.

I have read this notice.

(Client Signature) (Date)

(b) require each potential client to sign such document; and

(c) give each client a copy of such document; and

Provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

(ii) respondent must comply with both paragraph I.D. and paragraph I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term"; and provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss programs if the weight loss success or weight loss

maintenance success depicted in the advertisement is not representative of what participants in respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) what the generally expected success would be for Beverly Hills customers in losing weight or maintaining achieved weight loss; provided, however, that in determining the generally expected success for Beverly Hills customers respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) one of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants.";

Provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Beverly Hills clients lose an average of _____ pounds over an average _____—week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) in immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Representing, directly or by implication, that any weight loss program or services can be obtained for free, unless respondent discloses, clearly and prominently, either (1) in close proximity to such representation, the existence and amount of all mandatory fees associated with the free offer; or (2) in immediate conjunction with such representation, the following statement: "You must pay for [list of products or services that participants must purchase at additional cost] to take advantage of this free offer."; provided, further, that in broadcast media, if the representation that triggers the disclosure is oral, the disclosure required by either (1) or (2) of this paragraph must also be made orally.

I. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner that 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; provided, however, that respondent may satisfy this requirement by directing its weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to telephone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

J. Representing, directly or by implication, the average or typical rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

K. Representing, directly or by implication, that participants or prospective participants in respondent's weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

L. Making comparisons between the efficacy of respondent's weight loss program(s) and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

M. Making comparisons between the safety of respondent's weight loss program(s) and the safety of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

N. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

O. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

P. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program or weight loss product.

II

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as

dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees, who is involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered that:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any other provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its favorable or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered that respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Beverly Hills Weight Loss Clinics International, Inc., (hereinafter "Beverly Hills"), marketer of the Beverly Hills low-calorie diet (hereinafter "LCD") program. The Beverly Hills diet program is offered to the public in the eastern United States through company-owned and franchised clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the typical rate or speed at which customers will lose weight; (3) the time frame within which customers will achieve their desired weight loss goal; (4) the safety of the Beverly Hills program in comparison to other weight loss programs; (5) the purchase price of the Beverly Hills program; and (6) the terms of the company's offers of free weight loss services. The complaint further alleges that Beverly Hills engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet instructions.

Success

The complaint against Beverly Hills alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Beverly Hills represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Beverly Hills diet program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because at the time it made the claims Beverly Hills did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the evidence of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of

sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (part I.B.), as well as the following information relating to that claim (part I.C.):

(1)The average percentage of weight loss maintained by those participants (*e.g.*, "60% of achieved weight loss was maintained"),

(2) the duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—*e.g.* "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Beverly Hills makes no claim that this result is representative of all participants in the Beverly Hills program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (part I.D.) requires that Beverly Hills, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve Beverly Hills of the obligation to substantiate any maintenance success claim, in accordance with part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if Beverly Hills makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Beverly Hills in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Beverly Hills idet program participants generally achieve, the order (part I.E.) requires that Beverly Hills disclosure either what the generally expected success would be for Beverly Hills customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, Beverly Hills may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Beverly Hills clients lose an average of ____ pounds over an average ____-week treatment period."

Finally, the proposed order (part I.P.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for claims it made concerning the average rate of weight loss for participants in its program. The proposed consent order addresses this practice (part I.J.) by prohibiting Beverly Hills from representing that participants in its programs will lose weight at an average or typical rate or speed, unless Beverly Hills possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame computed by Beverly Hills personnel. To address this practice, the proposed order (part I.K.) prohibits Beverly Hills from representing that participants or prospective participants will reach a specified weight within a specified period of time, unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Comparative Safety Claim

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for its claim that its weight loss programs are safer than other weight loss programs that do not include essential fatty acid supplementation. The proposed order seeks to address this practice in two ways. First, part I.M. requires the company to have competent and reliable scientific evidence substantiating any claim that compares the safety of its weight loss program with that of any other weight loss or diet program. Second, part I.P. of the proposed order prohibits the company from misrepresenting, among other things, the safety of any weight loss program or weight loss product.

Monitoring Practices

According to the complaint, Beverly Hills provides its customers with diet instructions that require the customers to come in to one of the proposed respondent's centers three times a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presenting with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet instructions. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Beverly Hills has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet instructions and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (part I.N.) requires Beverly Hills to disclose in writing to all participants when they enter the program, that failure to follow the program instructions and eat all of the

food recommended may involve the risk of developing serious health complications. Second, the proposed order (part I.P.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

Price

The Commission's complaint against Beverly Hills also alleges that the company falsely represented that the price it advertised far its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that Beverly Hills failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (part I.G.) requires Beverly Hills to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally under the proposed order if the free offer is made orally in broadcast media.

Finally, the proposed order (part I.I.) requires the proposed respondent to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, Beverly Hills can satisfy this requirement by: (1) Providing the center personnel with suggested language to be used when responding to telephone inquiries; and (2) making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

Fee Offers

The Commission's complaint also alleges that, through offers of free weight loss services, Beverly Hills falsely represented that its weight loss programs were being offered to consumers at no cost. The complaint further alleges that the company failed to disclose adequately to consumers that the receipt of free weight loss services is contingent upon the purchase, at substantial expense to the consumer, of other goods or services that are mandatory for participation in the company's weight loss programs.

The proposed consent order (part I.H.) seeks to address this practice by requiring that the company disclose either (1) the existence and amount of all mandatory fees associated with the free offer, or (2) a list of all products or services that participants must purchase at an additional cost to take advantage of the free offer. This disclosure must be made orally under the proposed order if the free offer is made orally in broadcast media.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

In the matter of Doctors Medical Weight Loss Centers, Inc., a corporation, Doctors Weight Loss Centers, Inc., a corporation, and Joyce A. Schuman, individually and as an officer of said corporation. File No. 912 3295.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Doctors Medical Weight Loss Centers, Inc. ("DMWLC"), a corporation, Doctors Weight Loss Centers, Inc. ("DWLC"), a corporation, and Joyce A. Schuman, individually and as an officer of said corporations, and it now appearing, that DMWLC, a corporation, DWLC, a corporation, and Joyce A. Schuman, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between DMWLC and DWLC, by their duly authorized officers, Joyce A. Schuman, and counsel for the Federal Trade Commission, that:

1. Proposed respondents DMWLC and DWLC are corporations organized, existing and formerly doing business under and by virtue of the laws of the State of Florida, with their offices and principal place of business located at 5479 A North Federal Highway, Fort Lauderdale, Florida 33309.

2. Proposed respondent Joyce A. Schuman is an individual with her principal residence located at 2730 Sea Island Drive, Fort Lauderdale, Florida 33301.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any to any other manner of service. The complaint

may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. *A broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers and disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered that respondents DMWLC, a corporation, DWLC, a corporation, their successors and assigns, and their officers, and Joyce A. Schuman, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) if the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Doctors Medical Weight Loss Centers/Doctors Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Doctors Medical Weight Loss Centers/Doctors Weight Loss Centers] program." provided, further, that compliance with the

obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold, lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein;

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here] For many dieters, weight loss is temporary.

I have read this notice.

(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for DMWLC/DWLC customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for DMWLC/DWLC customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure;

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Doctors Medical Weight Loss Centers, Inc./Doctors Weight Loss Centers, Inc. participants lose an average of _____ pounds over an average _____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of

any and all mandatory costs or fees associated with participation in the program; provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondent Joyce A. Schuman shall promptly notify the Commission of the discontinuance of her present business or employment and of her affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and from in which they have complied with this Order.

File No. 922 3001.

In the matter of Quick Weight Loss Centers, Inc., a Texas corporation, Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quick Weight Loss Centers, Inc., a Texas corporation ("QWLC-Tex."), Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation, and it now appearing that QWLC-Tex., a corporation, Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between QWLC-Tex., by its duly authorized officers, Don K. Gearheart, Joyce A. Schuman, and counsel for the Federal Trade Commission, that:

1. Proposed respondent QWLC-Tex. is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 2900 Gateway, suite 605, Irving, Texas 75063.

2. Proposed respondent Don Gearheart is an individual with his principal residence located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona 85255.

3. Proposed respondent Joyce A. Schuman is an individual with her principal residence located at 2730 Sea Island Drive, Fort Lauderdale, Florida 33301.

4. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

9. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made " clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered that respondents QWLC-Tex., a corporation, its successors and assigns, and its officers, and Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, *provided*, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representations only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is neither:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight

loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Quick Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Quick Weight Loss Centers] program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold), lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D (2) shall be included therein;

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____] For many dieters, weight loss is temporary.

I have read this notice. _____
(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number of percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for QWLC-Tex. customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for QWLC-Tex. customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) one of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure;

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Quick Weight Loss Centers, Inc. participants lose an average of _____ pounds over an average _____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success

depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) in immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any and all mandatory costs or fees associated with participation in the program;

provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Representing, directly or by implication, that any weight loss program is supervised or monitored by health care professionals, unless such is the case, or otherwise misrepresenting, directly or by implication, the extent to which any weight loss program is supervised or monitored by health care professionals.

M. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondents Don K. Gearheart and Joyce A. Schuman shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondents shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

File No. 922 3002.

In the matter of Quick Weight Loss Centers, Inc. a Georgia corporation, and Don K.

Gearheart, individually and as an officer of said corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quick Weight Loss Centers, Inc., a Georgia corporation ("QWLC–Ga."), and Don K. Gearheart, individually and as an officer of said corporation, and it now appearing that QWLC–Ga., a corporation, and Don K. Gearheart, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between QWLC–Ga., by its duly authorized officers, Don K. Gearheart, and counsel for the Federal Trade Commission, that:

1. Proposed respondent QWLC–Ga. is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Georgia, with its offices and principal place of business located at 1401 Johnson Ferry Road, suite 276, Marietta, Georgia 30062.

2. Proposed respondent Don Gearheart is an individual with his principal residence located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona 85255.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

b. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered that respondents QWLC–Ga., a corporation, its successors and assigns, and its officers, and Don K. Gearheart, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence

shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Quick Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Quick Weight Loss Centers] program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold), lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein;

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____. For many dieters, weight loss is temporary.

I have read this notice.

_____

(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph; provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her

weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for QWLC-Ga. customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for QWLC-Ga. customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure;

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Quick Weight Loss Centers, Inc. participants lose an average of ____ pounds over an average ____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any and all mandatory costs or fees associated with participation in the program; provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting on the emergency of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondent Don K. Gearheart shall promptly notify the commission of the discontinuance of his present business or employment and of this affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for comment three separate proposed consent orders with the following: (1) Doctors Medical Weight Loss Centers, Inc. ("DMWLC"), Doctors Weight Loss Centers, Inc. ("DWLC"), and Joyce A. Schuman ("Schuman"); (2) Quick Weight Loss Centers, Inc., a Georgia corporation ("QWLC–Ga."), and Don K. Gearheart ("Gearheart"); and (3) Quick Weight Loss Centers, Inc., a Texas corporation ("QWLC–Tex."), Gearheart, and Schuman. Under the direction and control of Gearheart and Schuman, the companies marketed similar low-calorie diet programs through weight loss centers in Florida, Georgia, and Texas, and used substantially similar advertisements and promotional materials to do so.

The Commission has placed the proposed orders on the public record for sixty days for comment by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the three agreements and decide whether it should withdraw from, or make final, any or all of the proposed orders.

The Commission's three complaints charge that all of the proposed respondents deceptively promoted the efficacy and price of their diet programs, the rate at which their customers lose weight, and used deceptive monitoring practices. The complaint against QWLC–Tex., Gearheart, and Schuman also charges that they deceptively promoted the qualifications of, and supervision offered by, their staff.

Efficacy

The Commission's three complaints first charge that all of the proposed respondents failed to substantiate claims that their customers typically are successful in reaching and maintaining their goal weight.

The agreed-to orders seek to address these charges in several ways. First, the proposed orders simply prohibit representations about the success of customers in achieving or maintaining weight loss, unless proposed respondents have and rely upon competent and reliable scientific evidence to substantiate the representations. (¶ I.A.) For representations that any weight loss achieved or maintained through weight loss programs is typical or representative of all, or any subset, of customers, the required "competent and reliable scientific evidence" must be based upon a sample of (1) all customers who entered the diet programs, where the representation relates to such customers, or (2) all customers who completed a particular phase of a diet program, or the entire program, where the representation relates only to such customers. (¶ I.A. (1)) for representations that any weight loss is maintained long-term, the supporting evidence must be based upon the experience of customers who were followed for at least two years after they completed the maintenance phase of the diet programs (or earlier termination, as applicable). (¶ I.A. (2)) For representations that any weight loss is maintained permanently, the required evidence must be based upon the experience of customers who were followed for a period of time that is either (1) generally recognized by experts in the field of treating obesity as being of sufficient length to predict that weight loss will be maintained permanently, or (2) demonstrated by competent and reliable survey evidence as being of sufficient length to permit such a prediction. (¶ I.A. (3))

The proposed orders also prohibit proposed respondents from representing that customers of any weight loss program have successfully maintained weight loss, unless they also disclose that "for many dieters, weight loss is temporary" (¶ I.B), as well as the following factual information: (1) The average percentage of weight loss maintained by those customers; (2) the duration over which the weight loss was maintained, measured from the date that customers ended the active weight loss phase of the program; and (3) if the customers referred to are not representative of the general customer population of respondents' programs, either (a) the proportion of the total customer population in respondents' programs that those customers represent, or (b) the statement that proposed respondents make no claim that the results are representative of all participants in their programs. (¶ I.C)

The proposed orders further prohibit representations, in broadcast advertisements of thirty seconds or less, that participants of any weight loss program have successfully maintained weight loss, unless proposed respondents also:

(1) Include the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast advertisement of any such advertisement and ending no sooner than thirty days after the last broadcast advertisement, comply with the following procedures for information from a potential client:

(a) Give to each potential customer a separate document that includes the maintenance information disclosures discussed above;

(b) Require each potential customer to sign this document; and

(c) Give each customer a copy of the document, and retain a copy of the document (¶ I.D.)

When proposed respondents use advertisements containing the endorsement or testimonial of one of their customers about weight loss success or weight loss maintenance success, and the success depicted in the advertisement is not representative of what their customers generally achieve, the proposed orders also require proposed respondents to disclose what the generally expected success would be for customers of proposed respondents in losing weight or maintaining weight loss, or one of several alternative statements that disclaim the typicality of the success depicted. (¶ I.E.)

Rate of Weight Loss

The Commission's three complaints also charge that all of the proposed respondents claimed that an appreciable number of customers following their diet programs typically lose weight at an

average rate of six or more pounds per week, when they did not have a reasonable basis for those claims. The Commission's complaints against (1) DMLWC/DWLC and Schuman and (2) QWLC–Tex., Gearheart, and Schuman also charge that these proposed respondents claimed that customers following their diet programs typically lose weight at an average rate of thirty pounds in thirty days, or three to eight pounds per week, when they did not have a reasonable basis for doing so.

To remedy these practices, the proposed orders prohibit representations that customers will reach a specified weight within a specified period of time, without having and relying upon competent and reliable scientific evidence to support those claims. (¶ I.I.) The proposed orders also prohibit representations about the average or typical rate or speed at which customers have lost or will lose weight, without having and relying upon competent and reliable scientific evidence to support those claims. (¶ I.J.)

Price

The complaints further allege that proposed respondents falsely claimed that the prices they advertised for their diet programs were the only costs associated with losing weight on their diet programs, and that their failure in such advertisements to disclose the existence and amount of all mandatory expenses was a deceptive practice.

The proposed orders seek to remedy these charges in several ways. First, the proposed orders prohibit untrue claims that any price is the only the cost associated with losing weight on their diet programs. (¶ I.F.) Second, when representing the price of their diet programs, the proposed orders also require proposed respondents either (1) to disclose the existence and amount of all mandatory fees associated with the advertised diet programs, or (2) to state in one of two ways that customers are required to purchase additional products or services. (¶ I.G.) Finally, the proposed orders require telephone disclosures to all prospective customers who ask, or are otherwise told about, the price of their weight loss programs, about the existence and amount of all mandatory fees. (¶ I.H.)

Monitoring Practices

The complaints also charge that proposed respondents engaged in deceptive monitoring practices. Proposed respondents instructed their customers to check in with the weight loss centers three to six times per week so that proposed respondents could monitor the weight loss progress of their customers. Sometimes, when the customers checked in, they presented the proposed respondents with weight loss results indicating that they may not have been consuming all of the food recommended by proposed respondents. The Commission's complaints charge that proposed respondents' failure to disclose that this conduct could result in serious health complications was a deceptive practice.

The proposed orders seek to remedy this practice by requiring proposed respondents to disclose that failure to eat all of the food recommended may involve developing serious health complications. The proposed orders require proposed respondents to make this disclosure either (1) to all customers in writing when they start the weight loss program, or (2) to those customers who, after their first two weeks on the diet program, average a weekly weight loss that exceeds 2% of their initial body weight, or three pounds, whichever is less, for two consecutive weeks. (¶ I.K.)

Medical Supervision

Finally, the Commission's complaint against QWLC-Tex., Gearhart, and Schuman charges that these proposed respondents falsely claimed that customers who participated in their diet programs were monitored by health professionals.

The proposed order addresses this allegation by prohibiting untrue representations that any weight loss program is supervised or monitored by health care professionals, or other misrepresentations about the extent to which any weight loss program is supervised or monitored by health care professionals. (¶ I.L.)

The purpose of this analysis is to facilitate public comment on the three proposed orders. This analysis is not intended to constitute an official interpretation of any of the agreements and proposed orders, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–13286 Filed 6–1–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, June 22, 1994 from 1 p.m. to 4 p.m. and Thursday, June 23, from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G Street NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Stewardship reporting issues, (2) the Cost Accounting Exposure Draft, and (3) either the Liabilities Exposure Draft or the Revenue Recognition Exposure Draft.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 26, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–13360 Filed 6–1–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8:30 a.m.–5 p.m., June 29, 1994; 8:30 a.m.–12:45 p.m., June 30, 1994.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters To Be Discussed: The committee will discuss implementation of the "Vaccines for Children Program"; the scope of the "Vaccines for Children Program," including specific wording for hepatitis B, second dose Measles, Mumps, Rubella (MMR) and MMR catch-up, and influenza and pneumococcal vaccines for high-risk children; "Vaccines for Children Program": Other issues and statement; status of simplification of vaccine schedule; adolescent immunizations; Institute of Medicine report on vaccine safety, DTP and chronic encephalopathy, and other vaccines; proposed hepatitis A statement; hepatitis C; revised hepatitis B recommendation; revision of the varicella statement and status of application for licensure; revision of polio vaccine recommendation; BCG update; cost benefit analysis of rotavirus vaccines; National Vaccine Advisory Committee—adult immunization; an update on the National Vaccine Program; and an update on the Injury Compensation Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13376 Filed 6–1–94; 8:45 am]

BILLING CODE 4163–18–M

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.—4:30 p.m., June 27, 1994; 8:30 a.m.—12 noon, June 28, 1994.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Update on Childhood Pediatric TB Meeting plans; current research activities; tuberculosis in the foreign-born; update on federal tuberculosis activities; energy testing; the BCG statement; and the Screening statement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Alan R. Hinman, M.D., Director, National Center for Prevention Services, and Acting Executive Secretary, ACET, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–8000.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13377 Filed 6–1–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Science Board to the Food and Drug Administration

Date, time, and place. June 28, 1994, 8:30 a.m., Parklawn Bldg., conference rm. D, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.; Neil Wilcox, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board provides advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board provides advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It also provides a means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before June 14, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open committee discussion. The board will discuss issues relevant to toxicity testing and their potential impact on the scientific effectiveness of the agency. The discussion is designed to give the agency direction for future program development.

Closed committee deliberations. The board will discuss information concerning nominations for the FDA award for scientific achievement, that if discussed in public would disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 25, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–13330 Filed 6–1–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of Health and Human Services, Health Care Financing Administration.

ACTION: Correction to the notice published for the National Claims History Privacy Act System of Records.

SUMMARY: In the notice document 94–9804 appearing on page 19181, in the issue of Friday, April 22, 1994, appendix A was inadvertently left out. We are publishing the Appendix below.

Dated: May 23, 1994.

Richard A. DeMeo,

Privacy Act Officer, Health Care Financing Administration.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary.	To determine the number of stays for a beneficiary.
2. Day of Admission	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
3. Sex	—male —female —unknown	To measure sex-based differences.
4. Medicare Status Code	Code to show reason for beneficiary's entitlement. —aged without ESRD —aged with ESRD —disabled—without ESRD —disabled with ESRD —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination	—To home, self care —To short-term hospital —To SNF —To other type facility —To home health service —Left against medical advice —Died —Still a patient	To group stays into Diagnosis Related Groups (DRGs).
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Number of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days.	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges 12. Routine Accommodation Charges. 13. Intensive Care and Coronary Care Charges. 14. Total Department (Ancillary) Charges. 15. Operating Room Charges. 16. Pharmacy Charges. 17. Laboratory Charges. 18. Radiology Charges. 19. Supplies Charges. 20. Anesthesia Charges. 21. Inhalation Therapy Charges.	All charge fields (fields 11–21) are in whole dollars.	Charge fields 11–21 are included in measure relative resource use across cases.
22. Principal and Other Diagnosis Codes	Five ICD–9–CM Codes	Fields 22–23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes	Three ICD–9–CM Volume 3 codes	
24. Date of Surgery	Date plus/minus 1 to 20 days*	To measure intervals between admission/discharge and surgery
25. Blood Furnished	Number of pints	To measure outcomes.
26. Diagnosis Related Group	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
27. Date of death	Date, plus/minus 1 to 20 days*	To determine mortality rates.
28. Urban/rural residence	1=urban 2=rural	To examine variations in care in urban and rural areas.
29. Zip-Code	5 digit zip	To examine variations in care in small areas.
30. Special Unit Code	S—Psychiatric Unit T—Rehabilitation Unit U—Swing-bed Hospital V—Alcohol/Drug Unit Blank	Distinguishes PPS-exempt unit records.
31. Beneficiary State of Residence	Two-position SSA numeric code	To facilitate seasonal migration studies.
32. Source of Admission	Admission Type 1, 2, or 3: 1—Physician Referral 2—Clinic Referral 3—HMO Referral 4—Transfer from Hospital 5—Transfer from SNF 6—Transfer from Another Health Care Facility 7—Emergency Room 8—Court/Law Enforcement 9—Unknown Admission Type 4: 1—Normal Delivery 2—Premature Delivery 3—Sick Baby 4—Extramural 5—Unknown	To allow analysis of admissions and episodes of care.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
33. Type of Admission	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Unknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

*The same random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ± 1 through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD–9–CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc. 94–13331 Filed 6–1–94; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Notice of Meeting of the Genome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, June 14–15, 1994, at the Hotel Washington, Pennsylvania Avenue at 515 15th Street, NW., Washington, DC.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 14 from 5 p.m. to recess and on June 15 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Felecia Taylor, (301) 402–0838, two weeks in advance of the meeting.

This notice is being published less than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13340 Filed 6–1–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of 1 Asthma Academic Award (K07) (Telephone Conference Call)

Date: June 23, 1994

Time: 2 p.m.

Place: 5333 Westbard Avenue, Rm. 550, Bethesda, Maryland

Contact Person: Kathryn W. Ballard, Ph.D., Scientific Review Administrator, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13339 Filed 6–1–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–7122–03–8532]

Proposed Reestablishment of the Copper Flat Mine in Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Las Cruces District Office, will be directing the preparation of an EIS to be prepared by a third party contractor. The EIS will describe the potential impacts of the proposed re-establishment of the Copper Flat open-pit copper mining project located approximately 5 miles northeast of Hillsboro in Sierra County, New Mexico. The proposed Copper Flat Project would re-establish an open-pit copper mining operation at a site that was developed and operated from April 1982 to July 1982. All surface facilities were removed from the site in 1986 and a BLM-approved reclamation plan was implemented. The proposed Copper Flat Project would resume mining operations at the site and would reconstruct the associated processing facilities. The proposed project would mine and process an average of 16,500 tons of ore per day over a projected operating life of at least 10 years.

The public is invited to participate in the planning process. Public scoping meetings will be held at the following times and locations:

Time/Date and Location

7 p.m. June 22, 1994: Truth or Consequences Civic Center, 400 West Forth Avenue, Truth or Consequences, New Mexico

7 p.m. June 23, 1994: Hillsboro Community Center (in the old High School Building), Hillsboro, New Mexico.

DATES: Written comments on the scoping process will be accepted through July 5, 1994.

ADDRESSES: Comments should be sent to Russell Jentgen, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, BLM Las Cruces District Office, at (505) 525–4351.

SUPPLEMENTARY INFORMATION: Gold Express Corporation submitted a Plan of Operations to BLM proposing to re-establish the Copper Flat Project in 1991. As required by NEPA, an Environmental Assessment (EA) was prepared for the proposed Plan of Operations. Based on comments received on the EA and BLM's evaluation of the environmental impacts described in the EA, BLM notified Gold Express Corporation by letter dated October 7, 1993, that an EIS would need to be prepared before the BLM could approve the proposed Plan of Operations. Alta Gold Co. (Alta) acquired an option to purchase the Copper Flat Project from Gold Express Corporation in July 1993 and has exercised the option.

As proposed in the Plan of Operations, the project would be a conventional open-pit mining operation with an average daily production of 16,500 tons of ore. Ore would be crushed and processed on site to produce a copper concentrate that would be transported off-site for further processing. Waste rock and tailings produced by the proposed project would be placed in disposal facilities located on site. Water for mining and processing purposes would be provided from production wells located approximately 8 miles east of the mine site. In addition, ground water entering the pit would be pumped out to facilitate mining operations. The project is expected to have a life of at least 10 years and would employ approximately 150 people.

During the EA process, BLM identified four areas to be addressed in the EIS: (1) Potential impacts to the ground water system from pumping of the production wells; (2) potential impacts to the ground water system from dewatering of the pit; (3) potential impacts on ground water quality from placement of tailings in the tailings impoundment; and, (4) potential impacts to surface and ground water quality from drainage from the overburden and waste rock disposal areas. ELM is soliciting comments on these and other issues and opportunities to be addressed in the EIS.

BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives, and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action and significant issues being considered to be distributed to those on the mailing list and available upon request.

Dated: May 25, 1994

Kathy Eaton,

Acting State Director.

[FR Doc. 94–13437 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–FB–M

[OR–088–04–6332–01; GP–4–178]

Motor Vehicle Use Restrictions: Oregon

ACTION: Motorized Vehicle and Off-Highway Vehicle (OHV) Restriction Order Established: Molalla River, Clackamas Resource Area, Salem District, Salem, Oregon.

SUMMARY: Establish a motorized vehicle and OHV restriction order for areas on BLM-administered lands along the Molalla River, Clackamas County, Oregon. Motorized vehicles will be prohibited on forest roads, BLM trails, and lands west of the Molalla Forest Road in sections 7, 18, 19, 30, and 31, T. 6 S., R. 3 E., Willamette Meridian, and Sections 6, 7, and 17, T. 7 S., R. 3 E., Willamette Meridian. The Molalla Forest Road will remain open for public use.

Under special circumstances, the area manager may authorize motorized vehicle use within closed areas. However, the granting of motorized vehicle use within closed areas is a discretionary matter and must be approved prior to the motorized vehicle or OHV activity. Requests for motorized vehicle use within closed areas must be in writing 2 weeks prior to the proposed activity and will be considered on a case-by-case basis.

A copy of this restriction order is conspicuously posted at the Salem District Office, 1717 Fabry Road, SE., Salem, Oregon, and at Bureau of Land Management sites where other such notices are posted.

This restriction order does not apply to any Federal, State, or local officer or any member of an organized rescue or fire fighting force actively involved in the performance of an official duty. It does not apply to private forest landowners who have existing easement or road use rights for access for forest management activates. It does not apply to recreation uses or activities other than motorized vehicle or off-highway vehicle use.

EFFECTIVE DATE: July 1, 1994.

For further information contact: Area Manager, Clackamas Resources Area, Salem District Office, Bureau of Land Management, (503) 375–5646.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

(1) Preclude any individual or group from using motorized vehicles or OHVs on trails or roads intended for non-motorized activities with the Molalla River Recreation Corridor outside of designated trails, areas, or roads designed for such use.

(2) Prevent or reduce unacceptable sanitary, erosion, and solid waste disposal problems; reduce non-point source pollution to the Molalla River, a municipal water source.

(3) Prevent or reduce unacceptable riparian vegetation damage or bank erosion along the river.

(4) Preserve and protect the natural, cultural, and scenic resource values of the river corridor.

(5) Reduce the incidence of human-caused fires, littering, vandalism, and illegal dumping.

(6) Reduce or eliminate conflicts and safety hazards between non-motorized recreation activities such as equestrian use, hiking, or bicycling and provide for a full range of recreation opportunities within the Molalla River Recreation Corridor.

Authority for implementing this restriction order is contained in the Code of Federal Regulations, title 43, chapter II part 8340, subparts 8341, 8342, 8343, 8344 and part 8360, subparts 8364 and 8365. Any person failing to comply with the motorized vehicle and off-highway vehicle restriction described in this notice may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as specified in the Code of Federal Regulations, title 43, chapter II, part 8360 and 8360.0–7.

This restriction order is effective July 1, 1994, and shall remain in effect unless revised, revoked, or amended.

Dated: May 23, 1994.

Van Manning,

District Manager.

[FR Doc. 94–13335 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–33–M

[ID–050–406A–02; IDI–29779]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Blaine County, ID

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The following public land in Blaine County, Idaho has been examined and found suitable for classification and conveyance to the Ketchum Rural Fire District under the provisions of the *Recreation and Public Purposes Act*, as amended (43 U.S.C. 869 *et seq.*). The Ketchum Rural Fire District proposes to use the land for a fire station location.

T. 4 N., R. 17 E., Boise Meridian, Section 1: Portion of Lot 1, further described by metes and bounds survey: Beginning at the north ¼ corner, Section 1: Thence S. 70°43′44″ W., 265.34 feet to the TRUE POINT OF BEGINNING Thence: S. 26°07′00″ E., 560.51 ft.; N. 49°47′40″ W., 86.76 ft.; N. 54°13′17″ W., 183.34 ft.; N. 50°44′30″ W., 61.13 ft.; N. 10°12′51″ W., 97.39 ft.; N. 15°02′57″ W., 97.07 ft.; N. 63°53′00″ E., 107.07 ft.; to the TRUE POINT OF BEGINNING, containing 1.31 acres, more or less.

At time of patenting, the land will carry a lot designation based upon an April 1994 field resurvey of the parcel.

The land is not needed for federal purposes. Conveyance is consistent with current Bureau of Land Management and local county planning, and is in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior;

2. A right-of-way for ditches and canals constructed by the authority of the United States;

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information regarding this action is available for review at the office of the Shoshone District Bureau of Land Management, 400 West F Street, Shoshone, Idaho.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the land to the District Manager, Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352.

CLASSIFICATION COMMENTS. Interested parties may submit comments involving the suitability of the land for a rural fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a rural fire facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 16, 1994.

Janis L. VanWyhe,

Associate District Manager.

[FR Doc. 94–13332 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: Washington State University, Pullman, Washington, PRT–789955.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 50.

Summary of Activity to be Authorized: The applicant requests a permit to take collect blood and adipose tissue samples, collect vestigial premolars, hair clippings, claw tip clippings, tattoo and tag up to 50 polar bears. The applicant also requests authorization to radio-collar and release 2 male and 8 female polar bears to monitor this species in the North Pole region. Collected samples will be used to determine the levels of organochlorine and heavy metal contaminants, food chain dynamics, and ageing.

Source of Marine Mammals for Research: Wild polar bears of all ages and sexes.

Period of Activity: Through December 1994.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 420(c), Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: May 27, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–13411 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Wildlife Conservation Society, Prospect Park Wildlife Center, Brooklyn, NY 11225, PRT–790081.

The applicant requests a permit to purchase in interstate commerce four female, captive born, white-fronted wallabies (*Macropus parma*) from the Oklahoma City Zoo for breeding to enhance the propagation and survival of the species.

Applicant: Tigerin Peare, Columbus, OH, PRT–790349.

The applicant requests a permit to collect blood samples from 50 nesting female and 300 emerging hatchlings of green sea turtles (*Chelonia mydas*) at Melbourne Beach, Florida, for DNA analysis to enhance the survival of the species.

Applicant: Tortoise Group, Las Vegas, NV, PRT–789731.

The applicant requests a permit to euthanize Desert tortoises (*Gopherus agassizii*) donated from the general public. These tortoises will be part of a continual selection process as needed to remove those with upper respiratory tract disease and to prevent tortoise numbers from exceeding the holding capacity of applicant's facilities to enhance the survival of the species.

Applicant: Michael Brandman Associates, Sacramento, CA, PRT–782274.

The applicant requests an amendment to their current permit to take (conduct focused field surveys, approach and inspect nests) the least Bell's vireo (*Vireo bellii pusillus*) in Southern California for the purpose of determining the presence or absence of this species.

Applicant: Wildlife Conservation Society, New York, NY, PRT–790230.

The applicant requests a permit to import two male and two female Black tamarins (*Leontopithecus chrysopygus*) from Fundacao Parque Zoologico, Sao Paulo, Brazil, to enhance the propagation and survival of the species through breeding.

Applicant: Laboratory of Molecular Systematics, Washington, DC, PRT–789980.

The applicant requests a permit to import one blood sample taken from a captive-held male woodrail (*Tricholimnas sylvestris*) from the Taronga Zoo, Mosman, Australia, for genetic research aimed to enhance the survival of the species.

Applicant: Greenfalk Consultants, Worthington, OH, PRT–790001.

The applicant requests a permit to import blood, feathers and addled eggs from Peregrine falcons (*Falco peregrinus*) and gyrfalcons (*Falco rusticolus*) in the wild for the purposes of genetic and environmental research to enhance the survival of the species.

Applicant: Exotic Feline Breeding Compound Inc., Rosamond, CA, PRT–790140.

The applicant requests a permit to import two captive-bred male Chinese leopards (*Panthera pardus japonensis*) from the Magdeburg Zoological Gardens, Magdeburg, Germany, to enhance the propagation and survival of the species through breeding.

Applicant: Daniel Varland, Hoquiam, WA, PRT–790136.

The applicant requests a permit to take (capture, band, color mark, and release) Peregrine falcons (*Falco peregrinus*) in Western Washington, for the purpose of enhancement of the survival of the species.

Applicant: Biosystems Analysis, Tiburon, CA, PRT–789996.

The applicant requests a permit to take (capture/release) the Cui-ui sucker (*Chasmistes cujus*), Lost River sucker (*Deltistes luxatus*), Shortnose sucker (*Chasmistes brevirostris*), and Modoc sucker (*Catastomus microps*) throughout the historic range of the species for the purpose of determining the presence or absence of this species.

Applicant: David Germano, Bakersfield, CA, PRT–789957.

The applicant requests a permit to take (capture/hold/release) Tipton's kangaroo rat (*Dipodomys nitratoides nitratoides*), Fresno kangaroo rat (*D. n. exilis*), Giant kangaroo rat (*D. ingens*), and Blunt-nosed leopard lizard (*Gambelia sila*) in Southern California for the purpose of enhancing the survival of the species.

Applicant: Brian Foster, San Diego CA, PRT–789253.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Applicant: University of California, Santa Barbara, CA, PRT–790167.

The applicant requests a permit to take (capture, hold, release, and sacrifice) the Tidewater goby (*Eucyclogobius newberryi*) in Southern California for the purpose of determining the presence or absence of this species. Up to three fish will be sacrificed for voucher specimens from previously unknown areas where this species may occur for the purpose of enhancement of the survival of the species.

Applicant: Philip Behrends, Solana Beach, CA, PRT–756268.

The applicant requests an amendment to his current permit to take (live-trap and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in Southern California for species identification and scientific research aimed at the enhancement of survival of the species.

Applicant: World Center for Birds of Prey, Boise, ID, PRT–787554.

Applicant requests a permit to import one female captive-bred Harpy eagle (*Harpia harpyia*) from PROFAUNA, Venezuela, to enhance the propagation and survival of the species through breeding.

Applicant: Arthur McGowan, Colorado Springs, CO, PRT–790002.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. F. Bowker, "Thornkoof", Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Robert Patton, San Diego, CA, PRT–789255.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Applicant: Elizabeth Copper, Coronado, CA, PRT–789254.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington,

Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 27, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–13412 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–55–P

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0102), Washington, DC 20503, telephone 202–395–7340.

Title: Areas Designated by Act of Congress, 30 CFR part 761

OMB Number: 1029–0102

Abstract: 30 CFR part 761 allows coal mining companies to submit documentation that demonstrates it meets the definition of Valid Existing Rights (VER) to mine coal in an area prohibited by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM will use the information in making a VER determination.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Individual coal mining companies

Annual Responses: 40

Annual Burden Hours: 8,400

Estimated Completion Time: 210 hours

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 10, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13413 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0033), Washington, DC 20503, telephone 202–395–7340.

Title: Part 772—Requirements for Coal Exploration

OMB Number: 1029–0033

Abstract: The requirements in section 512 of Public Law 95–87 provide that persons conducting coal exploration shall comply with exploration regulations issued by the regulatory authority. Information collection is needed to determine whether there will be substantial disturbance during exploration which is subject to the reclamation and environmental protection provisions of the Act.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Coal Mining Companies

Annual Responses: 1,982

Annual Burden Hours: 11,881

Estimated Completion Time: 6 hours

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 10, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13414 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503, telephone 202–395–7340.

Title: Coal; Production and Reclamation Fee Report, OSM–1

OMB Number: 1029–0063

Abstract: In order to ensure compliance with 30 CFR 870, a quarterly report is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau Form Number: OSM–1

Frequency: Quarterly

Description of Respondents: Coal mine permittees

Annual Responses: 12,312

Annual Burden Hours: 3,365

Estimated Completion Time: 16 minutes

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: February 3, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13415 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0035), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR part 779.

OMB approval number: 1029–0035.

Abstract: Applicants for surface coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine

if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal Mine Operators.

Annual Responses: 550.

Annual Burden Hours: 43,085.

Estimated Completion Time: 78 hours.

Bureau clearance officer: John A. Trelease, (202) 343–1475.

Dated: October 28, 1993.

Gene E. Krueger,

Chief, Division of Technical Services.

Editorial note: This document was received at the Office of the Federal Register May 27, 1994.

[FR Doc. 94–13416 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–355 and 731–TA–660 (Final)

Grain-Oriented Silicon Electrical Steel From Italy and Japan

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Italy of grain-oriented silicon electrical steel, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Italy. The Commission further determines,[3] pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of grain-oriented silicon electrical steel that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective January 28, 1994, following a preliminary determination by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of grain-oriented silicon electrical steel from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 23, 1994 (59 FR 8658). The hearing was held in Washington, DC, on April 12, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 27, 1994. The views of the Commission are contained in USITC Publication 2778 (May 1994), entitled "Grain-oriented Silicon Electrical Steel from Italy and Japan: Investigation No. 701–TA–355 and 731–TA–660 (Final)."

By order of the Commission.

Issued: May 24, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13436 Filed 6–1–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting; Vice Chairman Watson not participating and Commissioner Bragg not participating in the determination in this investigation.

[3] Commissioner Bragg not participating in the determination in this investigation.

Investigation No. 731–TA–699 (Preliminary)

Stainless Steel Angles From Japan; Import Investigations

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of stainless steel angles,[3] provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 8, 1994, a petition was filed with the Commission and the Department of Commerce by Slater Steel Corp., Fort Wayne, IN, alleging that an industry in the United States is materially injured by reason of LTFV imports of stainless steel angles from Japan. Accordingly, effective April 8, 1994, the Commission instituted antidumping investigation No. 731–TA–699 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 14, 1994 (59 FR 17790). The conference was held in Washington, DC, on April 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 23, 1994. The views of the Commission are contained in USITC Publication 2777 (May 1994), entitled "Stainless Steel Angles from Japan: Investigation No. 731–TA–699 (Preliminary)."

Issued: May 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13435 Filed 6–1–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Bragg not participating in the determination in this investigation.

[3] For purposes of this investigation, stainless steel angles are defined as hot-rolled products of stainless steel, whether or not annealed or descaled, angled at 90 degrees, that are not otherwise advanced.

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–1 (Sub-No. 253X), Chicago and North Western Transportation Company—Abandonment-in Monroe County, Iowa. EA available 5/27/94.

Comments on the following assessment are due 30 days after the date of availability:

No. AB–43 (Sub-No. 157X), Illinois Central Railroad Company—Abandonment Exemption—In St. Tammany Parish, LA. EA available 5/24/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13409 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–1 (Sub-No. 249X)]

Chicago and North Western Transportation Company—Abandonment Exemption—Between Norfolk and Merriman, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Chicago and North Western Transportation Company (CNW) of approximately 248 miles of track between milepost 83.3 near Norfolk and milepost 331.0 near Merriman, NE, subject to standard labor protective and interim trail use conditions. The transaction is also exempted from the public use procedures of 49 U.S.C. 10906.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 17, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 10, 1994, petitions to stay must be filed by June 13, 1994, and petitions to reopen must be filed by June 22, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–1 (Sub-No. 249X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) petitioner's representative: Stuart F. Gassner, Chicago and North Western Transportation Company, One North Western Center, 165 North Canal St., Chicago, IL 60606.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: May 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan. Chairman McDonald commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13410 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32508]

Wisconsin Central Ltd.—Trackage Rights Exemption—Illinois Central Railroad Co.

Illinois Central Railroad Company (ICR) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. to operate over ICR's main line (1) between a connection with The Chicago, Central & Pacific Railroad Company at Belt Tower, IL (milepost W 8.4) and Moyers Intermodal Terminal at Harvey, IL (milepost 21.2), a distance of 26 miles; and (2) between a connection with Chicago and North Western Transportation Company near 16th Street and the Chicago River in Chicago, IL (milepost W 2.3) and Moyers Intermodal Terminal at Harvey, IL (milepost 21.2), a distance of 20 miles. The trackage rights were to become effective on or after May 25, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet Gilbert, Assistant General Counsel, Wisconsin Central Ltd., 6250 North River Road, suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13408 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems

Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530

For further information contact: Merrily Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Civil Rights Division's Americans with Disabilities Act Information Line); or John Wodatch, Chief, Public Access Section, Civil Rights Division, United States Department of Justice, P.O. Box 66738, Washington, DC 20035–6738, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line).

Copies of this notice and the Department of Justice regulations are available in the following alternate formats: Large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY). The rule is also available on electronic bulletin board at (202) 514–6193.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.
(2) Civil Rights Division
(3) One time only.
(4) State or local governments. Under title III of the Americans with Disabilities Act, on application from a State or local government, the Attorney General may certify that a State or local building code meets or exceeds the minimum accessibility and usability standards set forth in the Americans with Disabilities Act regulations.
(5) 25 annual respondents at 32 hours per response.
(6) 800 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: May 27, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13383 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–13–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

For further information contact: Merrily Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Civil Rights Division's Americans with Disabilities Act Information Line); or John Wodatch, Chief, Public Access Section, Civil Rights Division, United States Department of Justice, P.O. Box 66738, Washington, DC 20035–6738, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line).

Copies of this notice and the Department of Justice regulations are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY). The rule is also available on electronic bulletin board at (202) 514–6193.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Nondiscrimination on the Basis of Disability in State and local government Services.
(2) Civil Rights Division.
(3) Recordkeeping.
(4) State or local governments. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the Americans with Disabilities Act. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.
(5) 25,000 recordkeepers, 6 hours per response.
(6) 150,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: May 24, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13384 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–13–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, notice is hereby given that on 20 May 1994, a proposed consent decree in *United States* v. *GCI, Inc.*, Civil Action No. F–87–263 was lodged with the United States District Court for the Northern District of Indiana. The Complaint filed by the United States alleged violations of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.* The Consent Decree requires the defendant to maintain compliance with the Clean Water Act and pay a civil penalty of $70,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the

Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *GCI, Inc.*, DJ Ref. #90–5–1–1–2879.

The proposed consent decree may be examined at the office of the United States Attorney, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $11.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 94–13425 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Apache Energy & Minerals Co., et al.*, Civil Action No. 86–C–1675, concerning the California Gulch Superfund Site in and near Leadville, Colorado (the "Site") was lodged on May 16, 1994 with the United States District Court for the District of Colorado. The proposed consent decree is between the United States and the State of Colorado, as plaintiffs and counter-defendants (collectively the "governments"), and defendants and counter-plaintiffs ASARCO Incorporated ("ASARCO"), Resurrection Mining Company ("Resurrection"), Newmont Mining Corporation ("Newmont"), and the Res-ASARCO Joint Venture ("Res-ASARCO") (collectively the "Settling Defendants").

The decree provides for the reimbursement of the response costs incurred by the United States between February, 1991 and July, 1993, and the response costs incurred by the State of Colorado between February 1992 and July, 1993, from Res-ASARCO in the combined amount of $7.6 million (the claims against the Settling Defendants for the governments' response costs prior to these time periods having been previously addressed in a prior partial consent decree), and the reimbursement of the governments' future response costs incurred at the Site after July, 1993 from ASARCO and Resurrection in proportion to their assigned "work areas" under the decree. The decree establishes a process by which ASARCO and Resurrection will perform and pay for the clean-up of assigned "work areas" within the Site which are defined in the decree. In exchange for their commitments under the decree, the Settling Defendants are released from any alleged liability at those portions of the Site outside their respective "work areas," subject to specific exclusions from the decree which are reserved for resolution at a later date.

The decree also resolves the counterclaims of the Settling Defendants against the governments, and the alleged liability of the United States and the State at the Site, subject to the same exclusions applicable to the Settling Defendants (plus one additional exclusion applicable to the United States), on a cash basis. Under the terms of the decree, the United States will pay $6.1 million to ASARCO from the Judgment Fund plus an additional amount, not to exceed $4.05 million, equal to 15% of ASARCO's costs of implementing certain work under the decree if ASARCO's costs exceed $23 million. The State of Colorado will pay ASARCO a lump sum payment of $271,250.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Apache Energy & Minerals Co., et al.*, DOJ Ref. #90–11–3–138.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202 or at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado, 80202. A copy may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the proposed consent decree (including attachments), please refer to the referenced case and enclose a check in the amount of $76.00 (25 cents per page reproduction costs), payable to the "Consent Decree Library". If the attachments are not required, please so specify and enclose a check in the amount of $33.50 (25 cents per page reproduction costs).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–13428 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 U.S.C. 50.7, and section 122(d), (g), and (i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622 (d), (g), and (i), notice is hereby given that on May 6, 1994, a proposed partial consent decree in *United States* v. *Apache Energy & Mineral Company, et al.*, Civil Action No. 86–C–1675 (consolidated with Civil Action No. 83–C–2388), was lodged with the United States District Court for the District of Colorado.

The proposed consent decree between the United States and Hecla Mining Company ("Hecla") is a cash-out settlement pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed partial consent decree resolves Hecla's alleged liability for the generation and disposal of the Malta Gulch Tailings into the Malta Gulch Tailings Impoundments portion of the California Gulch Superfund Site ("Site"). The proposed consent decree also settles any remaining CERCLA liability Hecla may have at the Site as a result of the impacts of releases of the Malta Gulch Tailings, except liability for natural resource damages.

The proposed consent decree also settles the alleged liability of the United States for disposal of mill tailings containing hazardous substances at the Malta Gulch Tailings Impoundments portion of the Site.

Under the terms of the proposed partial consent decree, within 30 days of the effective date of the decree Hecla will pay $516,000 and the United States will pay $100,000 to reimburse the Hazardous Substance Superfund. The United States will pay an additional $72,000 plus interest to the Superfund within 1 year of the effective date of the decree. The decree provides that, subject to certain reservations, the United States covenants not to sue or take any other civil or administrative action against Hecla pursuant to Sections 106 and 107 of CERCLA, 42

U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 6973. The Environmental Protection Agency ("EPA") also covenants not to take administrative action against the United States under these same statutes and sections.

The Department of Justice will receive comments relating to the proposed consent decree between the United States and Hecla for a period of thirty (30) days from the date of this publication. Comments should be submitted to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Apache Energy & Mineral Company, et al.*, DOJ Ref. 90–11–3–138.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 1961 Stout Street, suite 1200, Denver, Colorado or at the EPA Superfund Records Center, 999 18th Street, 5th floor, South Tower, Denver, Colorado between 8:30 a.m. and 4:30 p.m. A copy may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–13426 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Action Brought Under the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States* v. *Boeing Company*, Civil Action No. C 94–746 WD, was lodged with the United States District Court for the Western District of Washington on May 16, 1994. This Consent Decree settles an action filed by the United States pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, naming The Boeing Company ("Boeing") as defendant.

The United States Department of Justice ("the United States") brought this action on behalf of the U.S. Environmental Protection Agency, for reimbursement of past costs and future oversight costs in connection with the Queen City Farms Site ("the Site"). The United States also sought to obtain injunctive relief against defendant.

The United States' claims are based on the contamination of the Site resulting from the disposal of industrial waste liquids which contained hazardous substances. The United States alleges in its Complaint that Boeing disposed of, or arranged for the disposal of hazardous wastes, hazardous substances, or materials which contained hazardous substances at the Site.

In this settlement, the Consent Decree provides for Boeing to reimburse the Superfund for past costs totaling $566,027.14. Boeing will also pay the United States' future oversight costs at the Site, and will implement the injunctive relief outlined in the Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Boeing Company*, DOJ number 90–11–3–1150.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 800 Fifth Avenue Plaza, Seattle, Washington, 98104, at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $19.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13423 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *United States* v. *Silvertone Plating Company, Inc.*, Civil Action No. 92–CV–76076 (E.D. Mich.), was lodged on May 13, 1994 with the United States District Court for the Eastern District of Michigan.

The Consent Decree resolves certain claims for civil penalties in connection with violations of a Consent Agreement and Final Order ("CAFO") under the Resource Conservation and Recovery Act 42 U.S.C. 6901 *et seq.* ("RCRA"), at a facility located at 7 South Emerick Street, Ypsilanti, Michigan. The Consent Decree requires Silvertone to pay the United States $1,000, but reserves the United States' rights with respect to injunctive relief and other claims. In the Decree, Sivlertone certified that it is no longer conducting business at the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Silvertone Plating, Company, Inc.*, DOJ Ref. #90–7–1–636.

The proposed consent decree may be examined at the Office of the United States Attorney, 231 West LaFayette Street, Detroit, Michigan 48226; the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13424 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice hereby given that on May 18, 1994 a proposed Consent Decree in *United States* v. *Stern Enterprises, Inc., et al.*, Civil No. 1:92CV1488, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires the defendants to pay a total civil penalty of $205,000 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree also requires the defendants to comply with the asbestos NESHAP and to complete all asbestos removal and demolition at the facility that is the subject of the Complaint by September 30, 1944.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Stern Enterprises, Inc., et al.*, D.J. Ref. No. 90–5–2–1–1595.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleaveland, Ohio 44114–2600 (contact Assistant United States Attorney Arthur I. Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Susan Perdomo); and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), (202) 624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree, please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13427 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 15, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Ibogaine (7260)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to import deuterated material not currently available in the United States for manufacturing of exempt products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 5, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–13397 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 15, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahyrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II

	Schedule
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture deuterated material for use in exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 5, 1994.

Dated: May 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–13398 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–029]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: June 29, 1994, 9 a.m. to 4 p.m.

ADDRESSES: Building 4200, room P110, George C. Marshall Space Flight Center, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, room 9K70, 300 E Street, SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Last Meeting and Action Items
—Rcap of MBRAC Activites and Accomplishments
—Report of the Associate Administrator for Small and Disadvantaged Business Utilization
—Current SDB Issues Regarding NASA Procurements
—Status of SDB Participations in Space Station and Other Major NASA Programs
—Chairman's Report
—Committee Reports
—Invitation for Suggestions by Individuals in Attendance

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: May 25, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–13434 Filed 6–1–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 13–14, 1994. The panel will meet from 9 a.m. to 5:45 p.m. on June 13 and from 9 a.m. to 5 p.m. on June 14 in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13337 Filed 6–1–94; 8:45 am]

BILLING CODE 7537–01–M

Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 16, 1994. The panel will meet from 9 a.m. to 3:30 p.m. in room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contract the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC, 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: May 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13336 Filed 6–1–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Humanities

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Office, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contracting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial of financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meeting, dated July 19, 1993, I have determined that these meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* June 21, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

2. *Date:* June 23, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

3. *Date:* June 28, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

4. *Date:* June 27, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Public Challenge Grants, submitted to the Division of Public Programs, for projects beginning after December 1, 1994.

David C. Fisher,
Advisory Committee Management Officer.

[FR Doc. 94–13422 Filed 6–1–94; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35):

1. Type of submission, new, revision or extension: Revision.
2. Title of the information collection: Policy Statement, Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.
3. The form number if applicable: Not applicable.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: States.
6. An estimate of the number of requests: 50.
7. An estimate of the total number of hours annually needed to complete the requirement or request: 1,000.
8. The average burden per respondent: 20 hours.
9. An indication of whether section 3504(h), Public Law 96–511 applies: Not Applicable.
10. Abstract: States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities.

Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer:

Troy Hillier, Officer of Information and Regulatory Affairs, NEOB–3019, 3150–0163, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

Dated at Rockville, Maryland, this 25th day of May 1994.

For the Nuclear Regulatory Commission
Gerald F. Cranford,
Designated Senior, Official for Information Resources Management.

[FR Doc. 94–13387 Filed 6–1–94; 8:45 am]
BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New
2. The title of the information collection: Regulatory Impact Survey for Materials Licensees
3. The form number if applicable: Not applicable.
4. How often the collection is required: Licensees are requested to respond only once.
5. Who will be required or asked to report: NRC materials licensees selected as part of a sample.
6. An estimate of the number of annual responses: 420
7. An estimate of the total number of hours needed annually to complete the requirement or request: 45 minutes per response. The industry total is 315 hours.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: NRC will survey a sample of materials licensees to determine their views of the impact of NRC regulation on the safe operation of their facility. This survey is designed to elicit licensee views of the efficacy of NRC regulation in ensuring safety, the burden on licensees of compliance, and the relationship between these two factors. The results of the survey will be used to help the NRC accomplish its mission while minimizing adverse impacts on licensees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 25th day of May 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–13386 Filed 6–1–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Meeting

SUMMARY: The Office of Personnel Management (OPM) announces the eighth meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet June 8, 1994, 1 p.m., in the OPM Conference Center, room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., Washington, DC 20415–0001. The conference center is located on the first floor.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, *Strategy To Promote Change*, which was adopted at the April 12, 1994, meeting.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by June 3, in order to be considered at the June 8, meeting.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–13321 Filed 6–1–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34110; File No. SR–ICC–600–21]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Notice of Filing of the Withdrawal of an Application for Registration as a Clearing Agency

May 25, 1994.

Pursuant to section 19(a)(3) of the Securities Exchange Act of 1934 ("Act"),[1] The Intermarket Clearing Corporation ("ICC") has filed with the Securities and Exchange Commission ("Commission") notice of its intent to withdraw its request for permanent registration as a clearing agency and to terminate its temporary registration as a clearing agency.[2] The Commission is publishing this notice to solicit comments on ICC's proposal from interested persons.

I. Discussion

ICC is the commodity clearing subsidiary of The Options Clearing Corporation ("OCC"). ICC commenced operations in 1985 as a "clearing organization," as defined in the rules promulgated under the Commodity Exchange Act,[3] and therefore is subject to oversight and regulation by the CFTC. ICC guarantees, clears, and settles futures contracts, options on futures contracts, and commodity options which are traded on those contract markets that have designated ICC as their clearing organization.[4]

Because the economic similarity between certain securities products and certain commodity products created opportunities for intermarket hedging and arbitrage, ICC and OCC developed a program to offer cross-margining to joint members of ICC and OCC.[5] The original cross-margining program between ICC and OCC required a joint member to transfer positions in securities options eligible for cross-margining from its OCC account to its account at ICC. Such options positions and futures contracts eligible for cross-margining were margined at ICC based upon the net risk of the combined positions. ICC held all positions, margin deposits, and clearing fund deposits with respect to the cross-margining program. ICC was obligated to OCC to perform a participating joint member's obligations with respect to short positions in securities options held in the joint member's ICC cross-margining account, and OCC remained obligated to collect and pay all premiums for transactions in securities options and to effect settlement of all exercises. Because securities positions were held and were margined at ICC and because ICC held all the margin deposits and clearing fund deposits with respect to cross-margined positions, ICC believed that it could possibly be viewed as being within the Act's definition of a clearing agency[6] and therefore registered with the Commission as such.[7]

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[1] 15 U.S.C. 78s(a)(3) (1988).

[2] Letter from James C. Yong, Vice President and Assistant Secretary, ICC, to Jonathan G. Katz, Secretary, Commission (March 24, 1994).

[3] Commodity Futures Trading Commission ("CFTC") Rule 1.3(d) [17 CFR 1.3(d) (1993)] defines clearing organization as the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions or for effecting settlements of contracts for future delivery or commodity option transactions for and between members of a contract market.

[4] Currently, ICC acts as the clearing organization for the Amex Commodities Corp., the New York Futures Exchange, Inc., and the Philadelphia Board of Trade.

[5] Securities Exchange Act Release Nos. 26153 (October 3, 1988), 53 FR 39567 [File No. SR–OCC–86–17] (order approving OCC/ICC proprietary cross-margining program) and 30041 (December 5, 1991), 56 FR 64824 [File Nos. SR–OCC–90–04 and SR–ICC–90–03] (order approving OCC/ICC non-proprietary, market professional cross-margining program).

[6] Section 3(a)(23)(A) [15 U.S.C. 78c(a)(23)(A) (1988)] defines a clearing agency as any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement, to reduce the number of securities transactions, or for the allocation of securities settlement responsibilities.

[7] On October 3, 1988, the Commission granted ICC temporary registration as a clearing agency for a period of eighteen months (Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR

Continued

Following regulatory approval of the cross-margining program between ICC and OCC, OCC entered into cross-margining arrangements with several other commodity clearing organizations.[8] Pursuant to those later cross-margining programs, instead of transferring all cross-margined option and futures positions into an account held at one clearing organization, cross-margined option positions are held at OCC and cross-margined futures positions are held at the participating commodity clearing organization. OCC and the participating commodity clearing organization share information regarding the positions held in their cross-margining accounts and treat the cross-margining accounts as being combined for purposes of calculating margin requirements. Collateral deposited to satisfy margin requirements is subject to the joint control of OCC and the participating commodity clearing organization. Members electing to participate in a cross-margining program must grant OCC and the participating commodity clearing organization cross-liens on option positions maintained at OCC and on futures positions maintained at the participating commodity clearing organization. Under this later cross-margining structure, a participating commodity clearing organization is not considered to be within the Act's definition of a clearing agency and therefore is not required to register with the Commission as such.

Recently, the cross-margining program between ICC and OCC was restructured so that it parallels the cross-margining programs between OCC and other participating commodity clearing organizations.[9] ICC believes that under the restructured cross-margining program it will no longer be acting as an intermediary in making payments or deliveries in connection with securities transactions and therefore will not be a clearing agency under the Act.[10] Accordingly, ICC requests that its application for permanent registration with the Commission as a clearing agency be withdrawn.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–ICC–600–21 and should be submitted by July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13380 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34109; File No. SR–Phlx–93–29]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Enhanced Specialist Participation in Parity Options Trades.

May 25, 1994.

On August 9, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to enhanced specialist participation in parity options trades. Notice of the proposal appeared in the **Federal Register** on September 20, 1993.[3] One comment letter was received opposing the proposed rule change,[4] to which the Phlx responded.[5] On April 19, 1994, the Exchange filed Amendment No. 1.[6] This order approves the Exchange's proposal, as amended.

39556). On April 5, 1990, October 3, 1991, and April 2, 1993, the Commission extended ICC's temporary registration for additional eighteen month periods (Securities Exchange Act Release Nos. 27879 (April 5, 1990), 55 FR 39556; 29781 (October 3, 1991), 56 FR 50959; and 32098 (April 2, 1993), 58 FR 18277).

[8] *E.g.*, Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 32681 (July 27, 1993), 58 FR 41302 (order approving expansion of OCC/BOTCC cross-margining program to include positions held for market professionals); 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation ["KCBOTCC"] cross-margining program for proprietary positions); and 32708 (August 2, 1993), 58 FR 42586 (order approving the expansion of the OCC/KCBOTCC cross-margining program to include positions held for market professionals).

[9] Securities Exchange Act Release No. 33342 (December 22, 1993), 58 FR 67885 [File Nos. SR–OCC–93–07 and SR–ICC–93–04] (order approving proposed rule changes to restructure the cross-margining program between OCC and ICC).

[10] ICC and OCC also offer joint members a cross-netting service which provides for the netting of a member's OCC exercise and assignment settlement obligations with its ICC settlement obligations. Previously, a joint member was able to select either ICC or OCC as its designated clearing organization ("DCO") for the purpose of settling its cross-netted obligations. The clearing agency selected as DCO was to act as the agent of the other clearing organization in effecting the cross-netted settlements. ICC has never been selected as a joint member's DCO, and pursuant to the recent approval of rule changes filed by ICC and OCC, members are no longer able to select ICC as their DCO. For a more detailed description of the proposed rule changes, refer to Securities Exchange Act Release No. 34088 (May 19, 1994), 59 FR 27303 [File Nos. SR–OCC–94–01 and SR–ICC–94–01] (order approving proposed rule change related to restructuring of cross-netting agreement between ICC and OCC). Accordingly, ICC believes that it will no longer be performing any activity with respect to cross-netting that would bring it within the definition of a clearing agency under the Act.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 32891 (September 14, 1993), 58 FR 48921.

[4] See Letter from Jay Mizrahi, General Partner, P.J. Shoreline Securities ("Shoreline"), to Jonathan Katz, Secretary, Commission, dated December 16, 1993 ("Shoreline Securities Letter").

[5] See Letter from William Uchimoto, Vice President and General Counsel, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated February 23, 1994 ("Phlx Response Letter").

[6] On April 19, 1994, the Exchange filed Amendment No. 1 to the proposed rule change to specify that: (1) The Exchange's Allocation, Evaluation and Securities Committee ("Committee") may only extend the proposed six month Enhanced Parity Split (as defined herein) for one additional six month period; and (2) the Enhanced Parity Split cannot cause a customer order to receive a smaller participation as a result of this rule than any other crowd participant, including the specialist. Further, Amendment No. 1 clarifies that (1) a "New Unit" would be any new equity options specialist unit approved by the Exchange on or after June 16, 1993; (2) a 'New Options Class" is any class of options listed for trading by the Exchange on or after June 16, 1993; and (3) the Enhanced Parity Split may be granted for a New Options Class after the initial six month period has expired as long as the New Options Class is assigned to the New Unit while it is still entitled to receive the Enhanced Parity Split

Description of Proposal

In order to encourage the registration with the Exchange of New Units,[7] the Exchange proposes to add new Commentary .17 to Rule 1014. Specifically, the proposal would enable New Units trading New Options Classes,[8] to execute 50% of the contracts in transactions where the New Unit is on parity with one registered options trader ("ROT"), and 40% of the contracts in a transaction where the New Unit is on parity with two or more ROTs ("Enhanced Parity Split"); provided, however, that no customer order which is on parity may receive a smaller participation than any other crowd participant, including the specialist.[9]

A New Unit can be formed by current ROTs and/or specialists as long as a new broker-dealer firm is established. Because the proposal will be limited to New Options Classes, options classes that are leased or otherwise transferred from an existing specialist to a New Unit, or that were listed on the Exchange prior to June 16, 1993, and which are assigned to a New Unit, and not covered by the proposed rule.

The Enhanced Parity Split would be effective for a period of six months from the commencement of trading by the New Unite of its first New Options Class.[10] Furthermore, the Committee may extend the Enhanced Parity Split for one additional six month period upon petition by the New Unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest.[11] The Enhanced Parity Split will also be applicable to any additional New Options Classes that are assigned to a New Unit, provided that at the time such classes are assigned, the New Unit is still entitled to receive the Enhanced Parity Split on the first New Options Class it commenced trading pursuant to this rule.[12] The Committee may terminate any extension of the Enhanced Parity Split if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.[13]

Comment Letter

The Comment letter received opposing the proposed rule change made several arguments as to why the proposed rule change is inappropriate.[14] The commenter first argues that the Exchange has no evidence that granting an Enhanced Parity Split to New Units will in any way benefit Phlx public customers. In fact, the letter argues that the proposed rule is anti-competitive and will ultimately harm public customers by acting as a disincentive for ROTs to make competitive markets, thus removing liquidity from the market. Shoreline believes that price competition is restricted whenever the specialist is granted a benefit not available to the ROTs in the crowd. Shoreline also argues that there is no evidence that the Enhanced Parity Split will encourage New Units to make tight and liquid markets, as the Phlx claims.

The commenter's next argument is that the proposed rule allows, but does not require, the New Unit to invoke the Enhanced Parity Split. Shoreline believes that this further harms ROTs because there may be instances where ROTs are forced to accept a greater percentage of an undesirable trade than they would if the New Unit is required to accept the Enhanced Parity Split.

Shoreline also argues that by allowing existing specialists and ROTs to form New Units, the proposal does not serve its stated purpose, which is to encourage the formation and registration with the Exchange of new specialist units.

Finally, the commenter argues that the Phlx has provided no specific criteria for maintaining or revoking the Enhanced Parity Split with respect to a particular New Options Class. Shoreline believes that if the Enhanced Parity Split is to be offered to New Units, the Committee should have objective standards to apply in making a determination of whether to extend the Enhanced Parity Split for the allowed additional six month period.

Phlx Response

The Phlx refutes the arguments raised by Shoreline.[15] First, the Phlx believes that the proposal will in fact add liquidity to the market, thus directly benefiting public customers. The Phlx believes the proposal will attract new specialist units to the Exchange and will encourage these New Units to make tight markets in New Options Classes in order to attract order flow to the Exchange. The Phlx argues that because every newly listed options class is subject to multiple listings, disincentives are created which discourage specialist units from acting as specialists for those new classes of options. The Phlx believes that the Enhanced parity Split will counteract these disincentives by offering New Units a direct benefit if they are able to attract order flow to the Exchange. The Exchange believes the New Units will be able to attract this order flow, and thus capitalize on the Enhanced Parity Split, only if they maintain tight markets in the New Options Classes. As a result, the Phlx believes that public customers will directly benefit from the proposed rule change.

The Phlx also disagrees with Shoreline's contention that any enhanced split is anti-competitive. First, the Enhanced Parity Split is available to any market making firm that is willing to establish a New Unit. Secondly, the proposal does not impact parity splits on existing options classes or New Options Classes traded by existing specialist units. Finally, a market maker can always establish priority in a trade by improving the market or by being the first in establishing a market that would otherwise be on parity.

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pursuant to the proposed rule change on the first New Options Class it commenced trading. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated April 19, 1994 ("Amendment No. 1").

[7] See Amendment No. 1, *supra* note 6.

[8] *Id.*

[9] In such cases, the specialist may waive the Enhanced Parity Split. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, ODEO, Division, Commission, on May 20, 1994.

[10] On August 17, 1992, the Exchange filed a similar proposal pursuant to which all specialists would have received the enhanced parity split contained in this proposal. See File No. SR–Phlx–92–19. The Exchange has withdrawn that proposal. See Letter from Keith Kessel, Phlx, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated December 2, 1993. On February 28, 1994, the Exchange filed another proposal which provides for a different form of enhanced parity participation for existing specialist units and for New Units that become ineligible for the Enhanced Parity Split pursuant to this proposal. See Securities Exchange Act Release No. 33935 (April 20, 1994), 59 FR 22038 (April 28, 1994) (notice of File No. SR–Phlx–94–12). If approved, the enhanced parity participation for specialists proposed in File No. SR–Phlx–94–12 would not be available to New Units that are eligible for the Enhanced Parity Split pursuant to this proposal. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, ODEO, Division, Commission, on April 20, 1994.

[11] See Amendment No. 1, *supra* note 6.

[12] Once granted, the Enhanced Parity Split on additional New Options Classes assigned to a New Unit may remain in effect for up to one year as provided herein even though the Enhanced Parity Split on the first New Options Class assigned to the New Unit terminates during that time period. *Id.*

[13] The Exchange represents that a New Unit will need the initial six month period in order to establish a trading record in the New Options Class. If, however, the New Unit's performance during the initial six month period is substandard, the Committee may reallocate the particular options class to another specialist pursuant to Phlx Rule 511. See Letter from William Uchimoto, General Counsel, Phlx, to Richard Zack, Branch Chief, ODEO, Division, Commission, dated January 5, 1994.

[14] See Shoreline Securities Letter, *supra* note 4.

[15] See Phlx Response Letter, *supra* note 5.

In response to the commenter's claims that market makers are unfairly disadvantaged by this proposal, the Phlx makes several arguments. First, the Phlx states that the claims that market makers will be hampered in hedging trades where they improve the market does not take into account the possibility that the market maker may be able to hedge by improving both sides of the market or by utilizing another options series for purposes of hedging. Additionally, the proposal does not impact in any manner the ability of a market maker to hedge an options position with underlying stock. Further, the Phlx argues that specialists have responsibilities and are subject to certain costs that market makers do not have, such as, updating and disseminating quotes, reflecting all market interest in the displayed quotes, and the fixed staffing cost committed to market making in a particular issue whether it is active or not. In order to attract specialist units to the Exchange who are willing to accept these responsibilities, the Phlx believes it is necessary to provide specialists with some benefits that are not available to ROTs. The Phlx believes that any negative impact to ROTs that may be caused by this proposal is more than offset by the benefit to the Exchange and its customers of attracting New Units to the Exchange.

The Phlx also refutes the commenter's claim that ROTs are further harmed because the New Unit is not required to invoke the Enhanced Parity Split. The Phlx argues that because specialists and ROTs both desire to buy at the bid and sell at the ask, there should be few undesirable trades where the specialist would not find it desirable to invoke the Enhanced Parity Split. As a result, the Exchange believes that any negative impact on the ROTs as a result of the permissive nature of the rule will be de minimis.

Finally, the Phlx argues that because the Enhanced Parity Split can apply to a New Options Class for at most one year, the Exchange does not believe that detailed evaluative criteria for use in awarding or removing the Enhanced Parity Split will be particularly effective or necessary. The Exchange believes that by the time that the New Unit establishes a trading history which can be reviewed and evaluated, the Enhanced Parity Split will probably have lapsed. Even without such criteria, however, the Phlx notes that the Committee has the ability to review the performance of a New Unit and to remove the Enhanced Parity Split at the end of the initial six month period, or in more egregious cases, to reallocate an options class for inadequate specialist performance.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[16] in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, the Commission finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by encouraging the creation of New Units and by encouraging those New Units to maintain tight markets for New Options Classes in order to attract order flow to the Exchange. The Commission believes the proposed rule change is a reasonable attempt by the PHlx to enhance the ability of New Units to compete for order flow in the environment of multiply-traded options classes. In addition, the protection of investors and the public interest is maintained because the Committee can refuse to extend the Enhanced Parity Split for an additional six months if the performance of the New Unit does not warrant an extension. Further, the proposed rule change provides the Enhanced Parity Split cannot disadvantage a public customer order that is on parity with a New Unit.[17]

The Commission agrees with the Exchange that in order to attract order flow to the Exchange, the Phlx needs to be able to attract and retain well capitalized specialist units that are willing to trade New Options Classes, as well as existing options classes. Further, the Commission disagrees with the commenter that the proposed rule change will disadvantage public customers. On the contrary, the proposed rule change eliminates any direct injury to public customers by providing that customer orders on parity may not receive a smaller participation than any other crowd participant, including the specialist.[18] Furthermore, because the proposal may serve to add liquidity to the market by encouraging New Units to maintain tight markets in order to attract order flow to the Exchange, the Commission believes that public customers could benefit from the proposed rule change.[19] Accordingly, the Commission believes there is no evidence to support a conclusion that the proposed rule change will disadvantage public customers.

The Commission also acknowledges that specialists have responsibilities that ROTs do not have and that these responsibilities have certain costs associated with them, such as the staff costs associated with continually updating and disseminating quotes. As a result, the Commission believes it is reasonable for the Exchange to grant certain advantages, such as the Enhanced Parity Split, to New Units in order to encourage New Units to register as specialists for New Options Classes. Accordingly, as long as these advantages do not unreasonably restrain competition and do not harm investors, the Commission believes that the granting of such benefits to specialists is within the business judgment of the Exchange. Therefore, even though the proposed rule change could arguably have some negative impact on ROTs, for the reasons stated above, the Commission believes the proposal is consistent with the Act.[20]

Finally, the Commission agrees with the Phlx that the lack of quantifiable standards for the Committee to apply in determining whether to extend the Enhanced Parity Split for an additional six month period does not make the proposal unreasonable. Even if the Phlx proposed such standards, some time period would be necessary in order for the New Unit to establish a trading history in the New Option Class in order for such a review to have any validity. In addition, the Committee still will review the performance of the New Unit in determining whether to extend the Enhanced Parity Split for an additional six months for particular New Options Classes. Because the Enhanced Parity Split can be in effect for at most one year for each New Options Class, the Commission believes that the lack of such standards does not prevent a finding that the proposal is consistent with the Act.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the

[16] 15 U.S.C. 78f(b)(5) (1988).

[17] See Amendment No. 1, *supra* note 6.

[18] The specialist may waive the Enhanced Parity Split in these circumstances. See *supra* note 9.

[19] The Commission notes that contrary to the commenter's contention, ROTs may in fact benefit from the Enhanced Parity Split if the New Units are successful in attracting order flow to the Exchange.

[20] Further, the Commission disagrees with the commenter that ROTs may be disadvantaged by the fact that New Units are not required to accept the Enhanced Parity Split in those instances where it applies. In those cases where a New Unit determines to waive the Enhanced Parity Split, the Exchange's normal parity rules will apply and the ROTs involved will be no worse off than they would on any other parity trade.

thirtieth day after the date of publication of notice of filing thereof in the Federal Register. First, Amendment No. 1 limits to one year the maximum time period during which the Enhanced Parity Split can exist with respect to any New Options Class and provides that the proposed rule cannot disadvantage customer orders. The purpose of the Enhanced Parity Split is to encourage New Units to maintain tight spreads in New Options Classes, which is a benefit to investors. The Commission believes that providing such an incentive to specialists is appropriate for New Options Classes for the period during which the market for such options classes is being established as long as safeguards exist to ensure that customers are not harmed. As a result, the Commission believes these amendments accomplish these goals consistent with the Act. Secondly, Amendment No. 1 also clarifies certain aspects of the proposed rule change. The Commission believes that these amendments strengthen the proposed rule change by minimizing any confusion that may arise as to the applicability of the rule. As a result, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–93–29 and should be submitted by June 23, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of Act,[21] that the proposed rule change (SR–Phlx–93–29) is hereby approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13344 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20320; 812–8980]

The First Trust Special Situations Trust, Oppenheimer Global and Treasury Securities Trust, Series 1 and Subsequent Series, et al.; Notice of Application

May 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The First Trust Special Situations Trust, Oppenheimer Global and Treasury Securities Trust, Series 1 and Subsequent Series (the "Trust"); Oppenheimer Global Fund, Oppenheimer Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Equity Income Fund, Oppenheimer Main Street Income & Growth Fund; Oppenheimer Asset Allocation Fund; Oppenheimer Global Bio-Tech Fund; Oppenheimer Total Return Fund, Inc., Oppenheimer Discovery Fund, Oppenheimer Time Fund, Oppenheimer Special Fund, and Oppenheimer Target Fund, on behalf of themselves and any open-end management investment companies, other than money market or no-load funds (*i.e.*, companies that do not impose a sales load, deferred sales load, or bear distribution expenses pursuant to a rule 12b–1 plan), that may in the future be advised by Oppenheimer Management Corporation or an adviser owned directly or indirectly by it or its parent corporation, Oppenheimer Acquisition Corp. (the "Funds"); Oppenheimer Management Corporation (the "Adviser"); Oppenheimer Funds Distributor, Inc. (the "Distributor"); and Nike Securities L.P. ("Nike," together with any sponsor controlled by or under common control with Nike, the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 12(d)(1), 14(a), 19(b), and 22(d) and rule 19b–1; under sections 11 (a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek an order: (a) Permitting series of the Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares along with the Trust's regular distributions; (d) permitting waiver of any contingent deferred sales charge otherwise applicable on Fund shares that the Trust has purchased; (e) permitting certain offers of exchange involving the Trust; and (f) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on May 6, 1994. Counsel, on behalf of applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Nike, 1001 Warrenville Road, Lisle, Illinois 60532; Oppenheimer Main Street Income & Growth Fund, Oppenheimer Total Return Fund, Inc., and Oppenheimer Equity Income Fund, 3410 South Galena Street, Denver, Colorado 80231; Other applicants, Two World Trade Center, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company. The Adviser serves as the Funds' investment adviser, and the Distributor serves as the Funds' principal underwriter. In accordance with the terms of an exemptive order, certain of the Funds offer multiple classes of shares with front-end sales loads, and in certain instances, contingent deferred sales charges ("CDSCs").[1] Each of the existing Funds has adopted a rule 12b–1 plan.

2. The Trust is a registered unit investment trust that will offer units in series ("Trust Series"), each of which will contain shares of one of the Funds that normally are offered with a sales load and U.S. Government zero coupon obligations ("zero coupon obligations"). The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a trust indenture which will incorporate a master trust agreement relating to the entire Trust and which will name a qualified bank as trustee (the "Trustee").

3. Each Trust Series will be sponsored by the Sponsor, who will perform the functions typical of unit investment trust sponsors, including: depositing fund shares in the Trust Series; acquiring zero coupon obligations and depositing them in the Trust Series; arranging for the evaluation of the zero coupon obligations by an independent evaluator (but not shares of the Funds since the Funds calculate net asset value daily); offering units to the public; and maintaining a secondary market in units. The Sponsor expects to deposit in each Trust Series substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units which will represent the entire ownership of the Trust Series.

4. Units of the Trust Series will be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in the Trust Series plus the offering side value of the zero coupon obligations contained therein plus a sales charge. The Trust Series will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations plus the net asset value of the Fund shares.

5. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The Sponsor will be permitted under the trust agreement to deposit additional securities, but will maintain the original proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. Fund shares may be redeemed only to meet redemptions by unitholders or to pay Trust Series expenses in the event that distributions received on Fund shares prove insufficient to cover the expenses.

6. The Trust Series will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit will receive back the approximate total amount of the original investment in the Trust Series, including the sales charge. The Sponsor intends to maintain a secondary market for Trust Series units based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares, but is not obligated to do so. In the event that the Sponsor does not maintain a secondary market, the trust agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value and, further, that zero coupon obligations cannot be sold to meet Trust Series expenses.

7. The sales load that normally would be applicable on sales of underlying Fund shares will be waived. The Sponsor and the Distributor will rebate to the Trustee any rule 12b–1 fees they receive on shares of the Funds held by the Trust Series.

8. Applicants have taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust Series will, with respect to all unitholders still holding units at the scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust Series to the investor in lieu of redeeming such shares. Second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust Series during the life of the Trust Series in Fund shares at net asset value.

Applicants' Legal Conclusions

1. Section 12(d)(1) generally limits acquisition by an investment company of shares of a registered investment company in the following ways: (1) The acquiring company may not acquire more than 3% of the voting stock of the acquired company; (2) the securities of the acquired company may not amount to more than 5% of the value of the assets of the acquiring company; and (3) securities of the acquired company and all other investment companies may not represent more than 10% of the assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. This proposal is structured to eliminate the pyramiding of expenses. No sales charge or distribution fee will be imposed on Fund shares deposited in the Trust. No investment advisory fee will be charged with respect to the Trust Series since they will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Trust Series. Another concern addressed by 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund that are held by a Trust Series will be voted by the Trustee in the same proportion as all other shares of that Fund not held by the Trust Series are voted. Another concern underlying section 12(d)(1) is the possibility of large-scale redemptions of shares of the underlying fund. The trust agreement will, however, permit the Trust Series to sell Fund shares only when necessary to meet redemptions or pay Trust Series expenses. Neither the Trustee nor the Sponsor will have any discretionary authority to determine when shares of the underlying Funds are to be sold or to substitute shares of another Fund for those deposited in a Trust Series. The threat to a Fund from large-scale redemptions is further reduced by the fact that each Trust Series is prohibited from acquiring more than 10% of the outstanding shares of any Fund.

3. Section 14(a) requires that investment companies have $100,000 of net worth prior to making a public offering. Applicants recognize that by withdrawing certificates representing the entire beneficial ownership of the

[1] Oppenheimer Management Corporation, Investment Company Act Release Nos. 19821 (Oct. 28, 1993) (notice) and 19894 (Nov. 23, 1993) (order).

Trust Series, the Sponsor may be deemed to be reducing the Trust Series' net worth below the requirements of section 14(a). Applicants intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust Series would not restrict its portfolio to "eligible trust securities."

4. Section 19(b) and rule 19b–1 provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income. Applicants request an exemption from Rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust Series' regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust Series. The Trust Series and their Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of units for redemption). Moreover, because distributions of capital are clearly indicated in accompanying reports to unitholders as a return of principal, the danger of confusion is not present in the operations of the Trust Series.

5. Section 22(d) generally prohibits a registered investment company from selling its shares except at a current offering price described in the prospectus. Applicants request an exemption from the provisions of section 22(d) to permit the waiver of any otherwise applicable CDSC where: (a) The Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust Series, and distributions from a Trust Series made during the existence of the Trust Series, ahve been reinvested by a unitholder in additional Fund shares; and (c) a Trust Series at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust Series to the unitholder in lieu of redeeming such shares. Waiver of the sales load will not harm the Funds or remaining shareholders. All Funds whose shares are subject to any sales load will fully disclose the waiver provision in their prospectuses.

6. Section 11(a) makes it unlawful for an registered open-end investment company or principal underwriter for such company to make certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to section 11 (a) and (c) approving the termination option described below. At the termination of the Trust Series, unitholders still holding units at maturity will have the option of either (a) transferring the registration of their proportionate number of Fund shares from the Trust Series to a registration in the investor's name, or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or (b) receiving a cash distribution. The exchange will be made on the basis of the net asset value of the Fund shares.

7. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of, or principal underwriter for a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions and rebated 12b–1 fees received on Fund shares prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor or the underwriters of Fund shares in connection with the distribution of Fund shares to the Trust will be promptly rebated to the Trustee.

3. No one Trust Series will, at the time of any deposit of any Fund shares, hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Trust Series investing in shares of the same Fund will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respect with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

6. Shares of a Fund which are held by a Trust Series will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

7. No sales charge or redemption fee will be imposed on any shares of the Funds deposited in any Trust Series or on any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination.

8. Applicants agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that unitholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13382 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20318; 812–8758]

Fortis Advantage Portfolios, Inc., et al.; Notice of Application

May 25, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Growth Fund, Inc., Fortis Income Portfolios, Inc., Fortis Money Portfolios, Inc., Fortis Tax-Free Portfolios, Inc., and Fortis

Worldwide Portfolios, Inc. (the "Funds"); Fortis Advisers, Inc. (the "Adviser"), and Fortis Investors, Inc. (the "Underwriter").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities and to assess, and under certain circumstances waive, a contingent deferred sales charge ("CDSC"). The order would supersede a prior order ("Prior Order") and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order.

FILING DATES: The application was filed on January 3, 1994, and amended on April 6, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies. Each Fund other than Fortis Fiduciary Fund and Fortis Growth Fund is organized as a series investment company and is authorized to issue its shares in more than one series. Fortis Fiduciary Fund and Fortis Growth Fund currently are authorized to issue only one series of shares. The Adviser serves as the investment adviser of each Fund. The Underwriter serves as the principal underwriter of the shares of each Fund.

2. The Fortis Money Fund series of Fortis Money Portfolios offers one class of shares at net asset value without the imposition of a FESC or CDSC. Each of the other Funds offers one class of shares at net asset value plus a front-end sales charge ("FESC") in connection with investments of up to $1 million. Investments of $1 million or more are not subject to a FESC, but rather a CDSC, which is permitted by the Prior Order.[1]

A. Variable Pricing System

1. Applicants, on behalf of themselves and future investment companies for which the Adviser, or any person controlled by or under common control with the Adviser, may serve as investment adviser, or for which the Underwriter, or any person controlled by or under common control with the Underwriter, may serve as principal underwriter, request an order that would permit the Funds to issue multiple classes of shares and to assess a CDSC. The order would supersede the Prior Order and would permit the Funds to impose CDSC schedules that may be different from the one described in that order.

2. Under applicants' proposal, the Funds could offer classes of shares either: (a) Subject to a FESC (with respect to investments of less than $1 million) or a CDSC (with respect to investments of $1 million or more) and subject to a 12b–1 distribution plan ("Class A shares");[2] (b) subject to a CDSC (expected to range from 4% on redemptions made during the first two years following purchase to 1% on redemptions made during the sixth year), a rule 12b–1 distribution plan with a service fee at an annual rate of up to .25% and a distribution fee at an annual rate of up to .75% of average daily net assets, and an automatic conversion to Class A after a certain period of time ("Class B shares"); (c) subject to a CDSC (expected to be 1% on redemptions made during the first two years following purchase), a rule 12b–1 service fee at an annual rate of up to .25% and a rule 12b–1 distribution fee at an annual rate of up to .75% of average daily net assets ("Class C shares"); (d) subject to a FESC, a rule 12b–1 service fee at an annual rate of up to .25%, and a rule 12b–1 distribution fee at an annual rate of up to .75%, of average daily net assets ("Class D shares"); (e) subject to a FESC (with respect to investments of less than $1 million) or a CDSC (with respect to investments of $1 million or more) but not subject to rule 12b–1 fees ("Class E shares");[3] (f) without a FESC or CDSC, but subject to a rule 12b–1 service fee at an annual rate of up to .25% of average daily net assets, for purchase exclusively by investors meeting such minimum investment and/or other eligibility requirements established by applicants ("Class Y shares"); and (g) without any sales or service charges for purchase exclusively by the Adviser, the Underwriter, certain agents and affiliates of the Adviser and Underwriter, and officers, directors, and employees of such entities ("Class Z shares"). The Funds also may establish one or more additional classes to be sold with different sales loads and service and distribution fee structures.

3. Class B shares of a Fund held for a specified number of years will convert automatically to Class A shares of such Fund at the relative net asset values of each of the classes.[4] For purposes of calculating the holding period, Class B shares will be deemed to have been issued on the sooner of: (a) The date on which the issuance of Class B shares occurred; or (b) for Class B shares obtained through an exchange, or a series of exchanges, the date on which

[1] Fortis Advantage Portfolios, Inc., *et al.*, Investment Company Act Release Nos. 19264 (February 11, 1993) (notice) and 19320 (March 9, 1993) (order), that permitted applicants to eliminate the FESC, and impose a CDSC, on sales of shares in the amount of $1 million or more. The CDSC may be in an amount of up to 1% and will be imposed only on shares redeemed within a period of up to 24 months after purchase.

[2] Applicants contemplate that existing shares of the Funds will be designated Class A shares upon implementation of the multi-class structure (except that existing shares of those Funds that do not currently have a 12b–1 plan will be designated Class E).

[3] Applicants anticipate that Class E shares would be implemented for each of the Funds that currently have no rule 12b–1 plan. If a Fund offers Class E shares, all existing shares would become Class E shares. Sales of Class E shares would be available only to those investors who were holders of a Fund's shares at the time of implementation of the multi-class structure.

[4] Applicants currently contemplate that Class B shares will be the only class of shares that automatically convert to another class of shares, except that upon the initial offering of Class Y and/or Class Z shares of any Fund, applicants may provide that shareholders of such Fund who would qualify for investment in Class Y or Class Z shares would automatically convert into Class Y or Class Z shares, as applicable.

the issuance of the original Class shares occurred.

4. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares are also Class B shares. However, for purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares (and which have not converted to Class A shares) will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

5. A class of shares will be exchangeable only for shares of the corresponding class of other Funds. all exchanges between Funds will comply with rule 11a–3 under the Act.

6. The classes of a Fund will represent interests in the same portfolio of investments, and will be identical in all respects except: (a) Each class would have a different designation; (b) each class may bear any rule 12b–1 plan payments related to that class (and any other costs related to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (c) each class may bear expenses determined by the board of directors to be allocated to that class, which are set forth in condition 1 below; (d) only shareholders of the affected classes would be entitled to vote on matters pertaining to the rule 12b–1 plan relating to their respective class in accordance with the procedures set forth in rule 12b–1; (e) each class would have different exchange privileges; and (f) classes that impose a rule 12b–1 fee may convert into another class.

7. The sum of any FESC, service fees, distribution fees, and CDSC will not exceed the maximum sales charge provided for in Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD").

8. Because of the varying levels of rule 12b–1 fees and other class-level expenses paid by the holders of different classes of shares, the net income attributable to and the dividends payable on each class may differ and, consequently, different classes of shares may have different net asset values.

B. The CDSC

1. Applicants also request an exemption that would permit the Funds to impose a CDSC and to waive the CDSC in certain cases. With respect to any class of shares of any Fund that charge a CDSC, the applicable CDSC will be calculated on the lesser of the net asset value at the time of the issuance or redemption of the shares. No CDSC will be imposed on: (a) Shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions; (b) an amount that represents an increase in the value of the shares due to capital appreciation; or (c) shares held for longer than the applicable CDSC period. Upon any request for redemption of shares that imposes a CDSC, it will be assumed, unless otherwise requested, that shares subject to no CDSC will be redeemed first in the order purchased (however, if a shareholder owns more than one class of shares, then shares not subject to a CDSC with the highest rule 12b–1 fee will be redeemed in full prior to any redemption of shares not subject to a CDSC with a lower rule 12b–1 fee), all remaining shares that are subject to a CDSC will be redeemed in the order purchased.

2. Applicants request the ability to waive the CDSC in the following instances: (1) Involuntary redemptions effected pursuant to a Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than the minimum account balance set forth in the Fund's then current prospectus; (b) the death or disability of a Fund shareholder within the meaning of section 72(m)(7) of the Internal Revenue Code; (c) in connection with redemptions of any shares held by tax-qualified retirement plans, excluding individual retirement accounts, simplified employee pension plans, section 403(b) plans and section 457 plans; (d) in connection with purchases of shares funded by the proceeds from the redemption of shares of any unrelated investment company that charges a FESC, provided that there was no CDSC, fee, or other charge imposed in connection with such redemption and if the purchase is made within 60 days following the redemption; (e) in connection with purchases of Fund shares funded by the proceeds from the surrender of a fixed annuity contract within 60 days of the purchase of Fund shares; (f) in connection with purchases of Fund shares by the following categories of investors and transactions; (i) Fortis, Inc., and its subsidiaries and specified persons associated with such companies; (ii) Fund directors and officers and specified persons associated with such directors and officers; (iii) representatives or employees of the Underwriter (including agencies) or of the other broker-dealers having a sales agreement with the Underwriter and specified persons associated with such entities; (iv) pension, profit-sharing and other retirement plans of the persons referenced in clause (i), (ii) and (iii), (v) registered investment companies; (vi) registered investment advisers, trust companies and bank trust departments exercising discretionary authority or using a money management/mutual fund "wrap" program; (vii) purchases that are funded by the proceeds from the plans referenced in clause (iv) upon the retirement or employment termination of such persons; (viii) purchases by employees (including their spouses and dependent children) of banks and other financial services firms that provide referral and administrative services pursuant to a sales agreement with the Underwriter or one of its affiliates; (ix) with respect to Asset Allocation Portfolio of Advantage Portfolios only, former officers and directors of Morison Asset Allocation Fund, and officers, directors and employees of Morison Asset Management, Inc. and its affiliates; (x) with respect to Government Total Return Portfolio of Advantage Portfolios only, officers and trustees of the Olympus Funds Trust, officers, directors and employees of Furman Selz Capital Management, and Furman Selz Mager Dietz and Birney, members of the Xerox Employee's Credit Union and members of their immediate family and persons owning shareholder accounts which were in existence and entitled to purchase shares of Olympus U.S. Government Plus Fund at net asset value, without the imposition of a FESC, at the time that such Fund's assets were acquired by Advantage Portfolios; (xi) with respect to Growth Fund, the Fortis U.S. Government Securities Fund series of Income Portfolios and each current series of Advantage Portfolios only, persons owning shareholder accounts of the applicable series of Carnegie-Capiello Trust or Carnegie Government Securities Trust that was acquired by the applicable Fund if, at the time of such acquisition, such shareholder accounts were in existence and entitled to purchase shares of the applicable Carnegie fund at net asset value, without the imposition of a FESC; (xii) with respect to the Fortis U.S. Government Securities Fund series of

Income Portfolios and the New York Portfolio series of Tax Free Portfolios only, persons owning shareholder accounts of the applicable series of The Pathfinder Heritage Funds that was acquired by the applicable Fund if, at the time of such acquisition, such shareholder accounts were in existence and entitled to purchase shares of the applicable Pathfinder fund at net asset value, without the imposition of a FESC; and (xiii) with respect to Fiduciary Fund only, persons having a Fiduciary Fund account on April 30, 1986; and (g) for an amount that represents, on an annual (non-cumulative) basis, up to 10% of the amount (at the time of the investment) of the shareholder's purchases.

3. In regard to waiver category (d) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee or other charge in connection with such redemption, including, without limitation, requiring the shareholder to provide a written representation in the shareholder's application that no deferred sales load, fees or other charge was imposed in connection with such redemption and, in addition, either requiring that shareholder provide the redemption check of such unrelated open-end investment company (or a copy of the check) or a copy of the confirmation statement showing the redemption.

4. Applicants intend to provide a one time credit for any CDSC paid upon redemption, the proceeds of which are reinvested in the same class of shares of a Fund within 60 days of redemption. The Underwriter will provide this credit from its own assets.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and (18)(i) of the Act to the extent that the proposed issuance of various classes of shares representing interests in the same Fund might be deemed to result in a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i). Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 was designed to address. The multi-class arrangement does not involve borrowing, nor will it affect the Fund's existing assets or reserves, and does not involve a complex capital structure.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemption of shares. The order would supersede the Prior Order and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) The designation to each class of shares of the Fund; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing from a service and/or distribution fee; (c) different expenses which the board of directors of a Fund may in the future determine to allocate to a specific class ("class-specific expenses"), which will be limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) director's fees incurred as a result of issues relating to one class of shares; (d) voting rights on matters exclusively affecting one class of shares (e.g., the adoption, amendment, or termination of a rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1 (except as provided in condition 15 below); (e) the different exchange privileges of the various classes of shares as described in the prospectuses of the Funds; and (f) classes that impose a 12b–1 fee may convert to another class. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of each the Funds, including a majority of the independent directors, shall have approved the variable pricing system prior to the implementation thereof by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the variable pricing system will reflect in detail the reasons for determining that the proposed variable pricing system is in the best interest of the Fund and its shareholders.

3. The initial determination of the class-specific expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the affected Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class-specific expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purpose of which the expenditures were made.

4 On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Underwriter will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Underwriter at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale of servicing of a particular class will not be presented to the directors to justify any fee attributable to the class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be

in the same amount, except that fee payments made under the rule 12b–1 plan relating to a particular class will be borne exclusively by each class and except that any class-specific expenses will be borne by the applicable class of shares.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in its initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The applicants agree to take immediate corrective action if the Independent Examiner, or an appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Underwriter will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the variable pricing system will be set forth in guidelines which will be furnished to the directors.

12. Each Fund prospectus (regardless of whether all classes of shares of such Fund are offered through such prospectus) will disclose the respective expenses, performance data, distribution arrangements, services, fees, FESC, CDSC, exchange privileges, and conversion features applicable to each class of shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data and ratios, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

13. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such actions may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares

subject to the higher maximum payments, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13343 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–919]

Application and Opportunity for Hearing: McKinsey & Company, Inc.

May 26, 1994.

Notice Is Hereby Given that McKinsey & Company, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") for an order exempting Applicant from the registration provisions of section 12(g) of the Exchange Act.

For a detailed statement of the information presented, all persons are referred to said application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice Is Further Given that any interested person not later than June 27, 1994, may submit to the Commission in writing its views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such a request, and the issues of fact and law raised by the application which it desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13381 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20319; 812–8826]

Payden & Rygel Investment Group, et al.; Notice of Application

May 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Payden & Rygel Investment Group (the "Trust"), Payden & Rygel (the "Adviser"), and Payden & Rygel Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order exempting them from the provisions of sections 18(f), 18(g), and 18(i) to the extent necessary to permit each of the Trust's existing and future investment portfolios (the "Funds") to issue two classes of shares.

FILING DATES: The application was filed on February 15, 1994, and amended on May 9, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applications with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 333 South Grand Avenue, 32nd floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The original name of the Trust was P&R Investment Trust. The Trust currently is comprised of five Funds: The Payden & Rygel Global Fixed Income Fund, the Payden & Rygel Short Bond Fund, the Payden & Rygel Intermediate Bond Fund, the Payden & Rygel Opportunity Fund, and the Payden & Rygel Tax Exempt Bond Fund. Currently, shares of each Fund primarily are offered to pension and profit sharing plans, employee benefit trusts, endowments, foundations, other institutions, corporations, and individuals with high net worth.

2. The Trust has entered into an investment management agreement with the Adviser, a registered investment adviser, whereby the Adviser manages the investment of the assets of the Funds and reviews, supervises, and administers all investments of the Funds. Shares of each Fund are distributed through the Distributor, a wholly-owned subsidiary of the Adviser. No compensation is payable by any Fund to the Distributor for its services. The Winston Company Limited Partnership (the "Administrator") serves as administrator to the Funds pursuant to an administrative agreement with the Trust. Under the administration agreement, the Administrator receives a monthly fee from the Funds based on a specified schedule of rates that is based on the Funds' average daily net assets. The Winsbury Service Corporation, an affiliate of the Administrator, provides accounting, dividend disbursing, and transfer agency services pursuant to a separate agreement with the Trust.

3. Applicants request a conditional order to permit each portfolio of the Fund to offer an additional class of shares ("Class B shares") that would be identical to existing shares except that Class B shares would be subject to a non-rule 12b–1 shareholder service plan (the "Plan"). Under the requested order, the existing shares would be "Class A" shares that would no be subject to a Plan and related fees. The Plan would authorize each Fund to compensate the Distributor and other securities broker-dealers and service organizations for shareholder services provided to Class B shareholders. Services to be provided under the Plan may include: (a)

Establishing and maintaining client/shareholder accounts and records; (b) aggregating and processing purchase, exchange, and redemption requests; (c) investing the assets of clients' accounts in Class B shares pursuant to specified pre-authorized instructions; (d) arranging for bank wires; (e) providing sub-accounting services and preparing tax reports and forms on behalf of shareholders; and (f) forwarding shareholder communications from the Funds.

4. It currently is contemplated that the service organizations would be compensated at an annual rate of up to 0.20% of the daily net asset value of the Class B shares of each Fund. The fees would be payable even if the amounts paid exceed the service organizations' actual expenses.

5. The services provided under the Plan are not primarily intended to result in the sale or distribution of Fund shares. Applicants in all cases will comply with article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers as it relates to the maximum amount of asset-based sales charges that may be exposed.

6. All transfer agency expenses and other expenses incurred with respect to a specific class will be borne by that class. All other expenses incurred by a Fund will be allocated between the two classes of shares based on the net assets of the Fund attributable to each class. Because of the service fees paid by Class B shareholders, the net income attributable to and the dividends payable on the Class B shares generally will be lower than those of the Class A shares. As a result, the net asset value per share of each class generally will differ.

7. Shares of the Funds generally may be exchanged at net asset value for shares of other Funds. The exchange privilege will comply with rule 11a–3 under the Act.

Applicants' Legal Analysis

Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed creation of the Class B shares may result in one class having priority over another as to payment of dividends, and thus be a "senior security" as defined in section 18(g) of the Act, and prohibited under section 18(f). The creation of Class B shares, where Class B shareholders would be entitled to exclusive voting rights with respect to matters concerning the Plan, also may violate the equal voting provision of section 18(i).

2. Applicants believe that the proposed arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the dual distribution system, an investor will be able to choose the method of purchasing shares that is most beneficial to an investor given his or her relevant circumstances.

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. In addition, these arrangements should not give rise to any conflicts of interest because the rights and privileges of such class of shares are substantially identical.

4. Applicants believe that the proposed arrangement does not present the concerns that section 18 of the Act was designed to ameliorate. The dual distribution system will not increase the speculative character of the shares of the Fund. The arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the dual distribution system suggests that it will facilitate control by holders of any class of shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund, (b) the exclusive right of Class B shares to vote on matters related to the Plan, (c) the impact of the disproportionate payments made under the Plan, (d) the incremental transfer agency costs attributable to the Class B shares of the Fund; (e) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (f) SEC registration fees incurred by a class of shares; (g) the expense of administrative personnel and services as required to support the shareholders of a specific class; (h) trustees' fees or expenses incurred as a result of issues relating to one class of shares; (i) accounting expenses relating solely to one class of shares; (j) Blue Sky registration fees incurred by one class of shares; (k) litigation of other legal expenses related solely to one class of shares; and (l) any other incremental expenses subsequently identified that should be properly allocated to one or more classes of shares that shall be approved by the SEC pursuant to an amended order.

2. The Trust's board of trustees, including a majority of trustees who are not interested persons of the Trust, will approve the dual distribution structure. The minutes of the meetings of the board of trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the dual distribution system will reflect in detail the reasons for the trustees' determination that the dual distribution system is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The trustees, including a majority of the trustees who are not interested persons of the Trust, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that the shareholders need not receive the voting rights specified in rule 12b–1.

5. The board of trustees will receive quarterly and annual statements concerning shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the servicing of a particular class of shares will be used to justify any servicing fee charged to that class. Expenditures not related to the servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the trustees who are not interested persons of the trust in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to teach class of shares, to the extent any dividends are paid, will be

calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments for services described in condition 1 above that are rendered to a particular class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value, and dividends and distributions of the two classes have been reviewed by an expert (the "Expert") who has rendered a report of applicants, which has been provided to the staff of the SEC, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made, and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to these reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to a Fund for these work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares, and this representation will be concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Export, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The conditions pursuant to which the order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Plan will be set forth in guidelines which will be furnished to the trustees.

10. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to the two classes of shares, regardless of whether both classes of shares in the portfolio are offered through the same prospectus. Each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses and/or performance data applicable to either class of shares, it will also disclose the respective expenses and/or performance data applicable to the other class of shares of such Fund. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of shares of such Fund.

11. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to the Plan in reliance on the exemptive order.

12. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trust including a majority of the trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

13. The prospectus of each fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to such standards.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13379 Filed 6-1-94; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 2014]

Advisory Committee on International Law; Meeting

A meeting of the Advisory Committee on International Law will take place on Tuesday, June 14, 1994, from 1:30 through 5 p.m., as necessary, in room 1408 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Conrad K. Harper, and will be open to the public up to the capacity of the meeting room. The meeting will focus on the establishment of an international criminal court, United States participation in the Law of the Sea Treaty, ratification of human rights conventions, possible ratification of the Vienna Convention on Treaties, as well as review of other current developments in international law.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, prior to June 13, 1994, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647-6771) of their name, affiliation, address and telephone number in order to arrange admittance.

Dated: May 19, 1994.

Bruce C. Rashkow,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law

[FR Doc. 94-13334 Filed 6-1-94; 8:45 am]

BILLING CODE 4710-08-M

Bureau of Political-Military Affairs

[Public Notice 2016]

Arms Embargo on Rwanda

AGENCY: Department of State.

ACTION: Public Notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Rwanda are suspended until further notice pursuant to Sections 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: May 27, 1994.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance & Analysis Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: United Nations Security Council Resolution 918 requires that all States prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts. On May 26, 1994, the President issued Executive Order 12918 implementing the Security Council arms embargo on Rwanda. Pursuant to the Executive Order, the following activities are prohibited:

(a) The sale or supply to Rwanda from the territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S.-registered vessel or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, irrespective of origin.

(b) Any willful evasion or attempt to violate or evade any of the prohibitions set forth in the order.

Pursuant to the Executive Order, section 38 of the Arms Export Control Act (22 U.S.C. 2778)(AECA), and the International Traffic in Arms Regulations (22 CFR parts 120–130)(ITAR), the export or other transfer to Rwanda of defense articles and services is prohibited.

It is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Rwanda. All such applications which have been submitted since the current strife in Rwanda began on April 6, 1994 have been denied. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Rwanda. These actions have been taken pursuant to Sections 38 and 42 of the AECA (22 U.S.C. 2778 and 2791) and § 126.7 of the ITAR.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports and reexports of any kind involving Rwanda subject to the AECA. This action also precludes the use in connection with Rwanda of any exemptions from licensing or other approval requirements included in the ITAR, with the exception of those exemptions specified in § 126.1(a).

Dated: May 27, 1994.

William P. Pope,

Acting Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 94–13552 Filed 6–1–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49472; Order 94–5–36]

Application of Frontier Airlines, Inc. For Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Frontier Airlines, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 6, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49472 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: May 26, 1994.

Robert Goldner,

Special Assistant to the Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13392 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Transportation is announcing that the Office of Management and Budget (OMB) has approved information collection requirements contained in final alcohol and drug testing rules covering safety-sensitive employees in commercial transportation.

DATE: May 25, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Pickrel, Departmental Reports Clearance Officer, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: The reporting and recordkeeping requirements were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). For information collections submitted with final rules, title 5 CFR part 1320 requires that after receipt of notification of OMB's approval, agencies shall publish a notice in the **Federal Register** to inform the public of OMB's decision.

Items Approved by OMB

Office of the Secretary, U.S. Department of Transportation Breath Alcohol Testing Form (OMB Number 2105–0529); Research and Special Programs Administration, Alcohol Misuse Prevention Program (OMB Number 2137–0587); Research and Special Programs Administration, Drug Testing (OMB Number 2137–0579); Federal Aviation Administration, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (OMB Number 2120–0571); Federal Aviation Administration, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities (OMB Number 2120–0535); Federal Highway

Administration, Controlled Substance and Alcohol Testing (OMB Number 2125–0543); Federal Railroad Administration, Control of Alcohol and Drug Use in Railroad Operations (OMB Number 2130–0526); Federal Transit Administration, Control of Alcohol Misuse in the Transit Industry (OMB Number 2132–0557); Federal Transit Administration, Prevention of Prohibited Drug Use in Transit Operations (OMB Number 2132–0556); and U.S. Coast Guard, Collection of Commercial Vessel and Personnel Accident (Marine Casualty) Information and Programs for Chemical, Drug and Alcohol Testing of Commercial Vessel Personnel, including required Drug and Alcohol Testing following a Serious Marine Incident and Management Information System Reports (OMB Number 2115–0003).

Issued in Washington, DC on May 25, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–13364 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions and Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independent Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 25, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27620
Petitioner: Mr. Douglas A. Balasco
Sections of the FAR Affected: 14 CFR 65.77
Description of Relief Sought/ Disposition: To allow Mr. Balasco to complete the remainder of his training for a mechanic certificate in the Albany/Schenectady, New York area instead of at a certificated aviation maintenance technician school.

Dispositions of Petitions

Docket No.: 20049.
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 2956, which permits T.B.M., Inc., to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight conducted in preparation for firefighting ferry, and test flights conducted in preparation for firefighting operations.
Grant, April 29, 1994, Exemption No. 2956H.

Docket No.: 24041.
Petitioner: Butler Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 2989, which would continue to permit Butler Aircraft Co. to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations.
Grant, April 29, 1994, Exemption No. 2989G.

Docket No.: 24165.
Petitioner: The Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b).
Description of Relief Sought: To allow the Department of the Air Force to deviate from the pertinent provision of the FAR which constrains aviation operations necessary to carry out the assigned night flight military training mission.
Grant, May 4, 1994, Exemption No. 5891.

Docket No.: 25886.
Petitioner: Washoe County Sheriff's Office.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To extend the termination date of Exemption No. 5119, which would continue to permit the Washoe County Sheriff's Office to reimburse members of the Sheriff's Air Squadron for fuel, oil, and maintenance costs that occur during official search missions.
Partial Grant, April 29, 1994, Exemption No. 5119B.

Docket No.: 26461.
Petitioner: Freedom Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5438, which allows appropriately trained pilots employed by Freedom Air to remove and reinstall aircraft cabin seats in company aircraft used in part 135 operations.
Grant, April 28, 1994, Exemption No. 5438A.

Docket No.: 26478.
Petitioner: The Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (d).
Description of Relief Sought: To extend the termination date of Exemption No. 5305, which allows the Department of the Air Force to deviate from the pertinent revisions of the FAR which constrain aviation operations necessary to carry out the assigned counternarcotics training mission.
Partial Grant, April 29, 1994, Exemption No. 5305A.

Docket No.: 26600.
Petitioner: Keflavik Navy Flying Club.
Sections of the FAR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought: To extend the termination date of

Exemption No. 5513, which allows the Keflavik Navy Club to use the Maintenance Department of Icelandair to conduct and record the inspections and test required by the aforementioned sections.

Grant, May 3, 1994, Exemption No. 5513A.

Docket No.: 27243.
Petitioner: Chalk's International Airlines.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought/ Disposition: To permit Chalk to operate its Grumman Turbo Mallard (G–73) aircraft, subject to specified conditions and limitations, in passenger carrying operations, under day visual flight rules (VFR), south of the 27 degree parallel, without a ground proximity warning system (GPWS).
Denial, April 18, 1994, Exemption No. 5769A.

Docket No.: 27373.
Petitioner: Sky King Inc..
Sections of the FAR Affected: 14 CFR 125.224.
Description of Relief Sought: To allow Sky King to operate one 400 series BAC 1–11 (equipped with more than 30 passenger seats) without Traffic Alert and Collision Avoidance System (TCAS) II and the appropriate class of Mode S transponder.
Denial, April 29, 1994, Exemption No. 5886.

Docket No.: 27560.
Petitioner: Samoa Aviation.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Samoa Aviation to continue operating its two DHC–6 deHavilland Twin Otters and one BE–A100 Beechcraft aircraft without Ground Proximity Warning
Denial, April 18, 1994, Exemption No. 5874.

Docket No.: 27598.
Petitioner: Sunaire Express.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought/ Disposition: To allow Sunaire Express to continue operating its DHC–6 Twin Otter aircraft without Ground Proximity Warning Systems (GPWS).
Denial, April 18, 1994, Exemption No. 5873.

Docket No.: 27645.
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 135.253.
Description of Relief Sought: To allow Trans World Express, Inc., to continue operating its aircraft without Ground Proximity Warning Systems (GPWS).
Denial, April 18, 1994, Exemption No. 5871.

Docket No.: 27667.
Petitioner: Leading Edge Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Leading Edge Aviation Services, Inc. to operate two deHavilland DHC–6 Twin Otter aircraft, Canadian registrations C–GKBC and C–GKBH, without an approved Ground Proximity Warning System (GPWS).
Denial, April 20, 1994, Exemption No. 5881.

Docket No.: 27670.
Petitioner: Four Star Aviation.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Four Star Aviation to operate two deHavilland DHC–6 Twin Otter aircraft without an approved Ground Proximity Warning System (GPWS).
Denial, April 18, 1994, Exemption No. 5880.

Docket No.: 27698.
Petitioner: Carnival Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To permit Carnival to operate one Airbus A300 B4–203 (A300 B4) aircraft without an approved airborne windshear warning system.
Denial, April 20, 1994, Exemption No. 5890.

[FR Doc. 94–13440 Filed 6–1–94; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–94–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 25, 1994.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 27701.
Petitioner: Mercy Hospital of Redding, Inc.
Section of the FAR Affected: 14 CFR 135.267(d).
Description of Relief Sought/ Disposition: To allow the Mercy Hospital of Redding, Inc., d.b.a. Mercy Medical Center, to count time spent in reserve away from the place of employment as rest time to satisfy the regulatory requirement that at least 10 consecutive hours of rest be provided during the 24 hours that precedes planned completion time of an assignment.

Docket No.: 27709.
Petitioner: Mr. Deryl Moses.
Section of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Mr. Moses to serve as a pilot in part 121 air carrier operation after his 60th birthday.

Dispositions Of Petitions

Docket No.: 17145.
Petitioner: United Airlines.
Section of the FAR Affected: 14 CFR 121.665 and 121.697 (a) and (b).
Description of Relief Sought/ Disposition: To extend the termination

date of Exemption No. 2466, which permits United Airlines to use computerized load manifests that bear printed name and position of the person responsible for loading the aircraft.

Grant, May 9, 1994, Exemption No. 2466I.

Docket No.: 25336.

Petitioner: United Airlines.

Section of the FAR Affected: 14 CFR 121.667(a)(3), 121.697 (b) through (d) and 121.709(b)(3).

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5121, which permits United Airlines to use a computerized signature to satisfy the signature requirements in lieu of physical signatures on the airworthiness release that is part of the log book carried aboard aircraft operated by United Airlines.

Grant, May 11, 1994, Exemption No. 5121C.

Docket No.: 26267.

Petitioner: Hill Management Services, Inc.

Section of the FAR Affected: 14 CFR 121.311(b).

Description of Relief Sought: To allow Jacqueline A. Julio to use her personal safety belt and be held on the lap of her caregiver while aboard aircraft even though she has reached her second birthday.

Grant, May 9, 1994, Exemption No. 5195B.

Docket No.: 26703.

Petitioner: Soloy Dual Pac, Inc.

Section of the FAR Affected: 14 CFR 21.19(b)(1).

Description of Relief Sought/ Disposition: To permit Soloy to apply for a supplemental type certificate to make a design change on the De Havilland DHC–3 Otter airplane, increasing the number of engines from one to two.

Grant, May 5, 1994, Exemption No. 5892.

Docket No.: 27243.

Petitioner: Chalk's International Airlines.

Section of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought: To allow flights to Walker's Cay Bahamas without a ground proximity warning system (GPWS).

Grant, May 10, 1994, Exemption No. 5769B.

Docket No.: 27665.

Petitioner: Arnautical, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a) (2), (3) and (b)(2), 121.413 (b), (c) and (d) and part 121, appendix H.

Description of Relief Sought/ Disposition: To permit Arnautical, Inc., without holding an air carrier operating certificate, to train the certificate holder's pilots and flight engineers in initial, transition, upgrade, differences, and recurrent training.

Partial Grant, May 10, 1994, Exemption No. 5894.

Docket No.: 27690.

Petitioner: Atlas Air, Inc.

Sections of the FAR Affected: 14 CFR appendix H of part 121.

Description of Relief Sought: To allow B747 initial or upgrade training to second in command (SIC) in a Phase II (Level C) simulator for experienced pilots and flight engineers who have not received any training or checking in the actual airplane.

Grant, April 29, 1994, Exemption No. 5888.

Docket No.: 27697.

Petitioner: Alaska Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 133.51.

Description of Relief Sought: To permit AHI to perform rotorcraft external-load operations in support of constructing the USAF ACMI repeater sites located in the Yukon 1, Yukon 2, and R–2202 Military Operating Areas in Alaska, using Bell Helicopters-Textron model 205A–1 or 212 Canadian-registered helicopter(s).

Grant, May 9, 1994, Exemption No. 5893.

Docket No.: 27726.

Petitioner: Twin Town Leasing Company.

Sections of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought/ Disposition: To permit Twin Air to operate one Embraer Model EMB110 PI (EMB 110), registration number N360CL, that is not equipped with an approved ground proximity warning system (GPWS).

Denial, April 20, 1994, Exemption No. 5895.

Docket No.: 27730.

Petitioner: Ronson Aviation Incorporated.

Sections of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought: To allow Ronson Aviation Incorporated to continue operating its two Beechcraft C99 aircraft, registration numbers N6645K and N6656N, without Ground Proximity Warning Systems (GPWS).

Denial, May 10, 1994, Exemption No. 5896.

[FR Doc. 94–13441 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: St. Clair and Madison Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the construction of a Mississippi River crossing, which would add capacity and divert traffic from the Poplar Street Bridge between Missouri and Illinois. The proposed project study area will extend from the McKinley Bridge on the north to Illinois Route 157, or Cherokee Street in St. Louis, on the south.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway Administration, Illinois Division, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622; Mr. Dale L. Klohr, District Engineer, Illinois Department of Transportation (IDOT), 1100 Eastport Plaza Drive, Collinsville, Illinois 62234, Telephone: (618) 346–3110.

SUPPLEMENTARY INFORMATION: The proposed action is to construct a new crossing of the Mississippi River at downtown St. Louis. The proposed project study area will extend from the McKinley Bridge on the north to Illinois Route 157, or Cherokee Street in St. Louis, on the south.

The need for a new Mississippi River crossing is based on the transportation demands, safety considerations and the opportunity for economic enhancement in the greater downtown St. Louis and East St. Louis area. The Poplar Street Bridge, which presently caries 128,000 vehicles per day, is operating over capacity in the peak periods, resulting in delays and congestion. By the year 2020, this condition will deteriorate and affect all of the other existing crossings.

Consideration of facility type to this point has been focused on a freeway to freeway bridge with two possible alternates identified within the study area. Because this project qualifies as a major metropolitan transportation investment, the St. Louis Metropolitan Planning Organization (East-West Gateway Coordinating Council) and the Illinois Department of Transportation, the Federal Highway Administration and the Federal Transit Authority are currently applying major transportation analysis procedures to determine other alternate modes which may be considered.

In addition to the major investment analysis, an informal scoping process will be undertaken as part of this project. The process will include meetings, review sessions as appropriate, and discussions at regularly scheduled meetings. Participants will include the East-West Gateway Coordinating Council, the Missouri Highway and Transportation Department and other Federal, State and local agencies. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT contact persons at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on April 28, 1994.

James C. Partlow,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 94-13338 Filed 6-1-94; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Biomechanics Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Discretionary Cooperative Agreement to Support Biomechanical Research.

SUMMARY: This notice announces a discretionary cooperative agreement program with the National Highway Traffic Safety Administration to support research studies to evaluate the biomechanical response of human surrogates to impact and solicits applications for projects under this program.

DATES: Applications must be received on or before July 5, 1994.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Belinda Leapley, 400 Seventh Street, SW., room 5301, Washington, DC 20590, USA. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22-94-R-07260. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Belinda Leapley, Office of Contracts and Procurement, at (202) 366-9566. Programmatic questions relating to this cooperative agreement program should be directed to Richard M. Morgan, Biomechanics Division (NRD-12), 400 Seventh Street, SW., room 6221B, Washington, DC 20590, USA, at (202) 366-4717.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The National Highway Traffic Safety Administration is responsible for devising strategies to save lives and reduce injuries from motor vehicle crashes. The purpose of this cooperative agreement program is to promote the improvement of traffic safety for the public through the support of research studies designed to evaluate the biomechanical response of human surrogates to impact as a means of expanding the base of scientific knowledge in this field and to provide for the coordinated exchange of scientific information collected as a result of the studies conducted.

Impact trauma research employs the principles of mechanics to discover the physical response and physiological results of impacts to the human body. Generally, the teams doing the research are comprised of individuals from different disciplines: engineering, physiology, medicine, biology, and anatomy. The team studies the physical response of the body to impact by measuring and recording engineering parameters defining the event, such as force, accelerations, displacements, surface contours, strains, pressure, etc., and observing the physiological consequences in terms of physical or functional alterations to the body.

One of the major research materials used to simulate injury to the living human is the human cadaver (hereinafter referred to as a human surrogate) exposed to impact and detailed response measurement.

The focus of this cooperative research effort is the study of human surrogate response and injury to physical impacts simulating some significant aspect of automotive impact injury, *i.e.*, head, neck, torso, or lower extremity injury produced in drivers and passengers, restrained by various safety devices and exposed to either a frontal, lateral, or rear impact. The specific objectives of this cooperative research effort are to: (1) Delineate the mechanism of injury, (2) develop functional relationships between the measurable engineering parameters and the extent and severity of injury, and (3) quantify the impact response of the body in such a way as to allow the development of mechanical analogs of the human body.

NHTSA Involvement

The NHTSA, Biomechanics Division, will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide, on an as-needed basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the organization and the NHTSA;
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;
3. Provide liaison with other government agencies and organizations as appropriate; and
4. Stimulate the exchange of ideas and problems among cooperative agreement recipients, and, if appropriate, NHTSA contractors and other interested parties.

Involvement for Recipient of an Award

Any recipient of an award will:

1. Perform an effort in accordance with the application proposal and any incorporation revisions;
2. Contribute any in-kind resources, that might have been specified by the recipient in the application, for the performance of the effort under the agreement;
3. Meet periodically with the NHTSA COTR to promote the exchange of information so as to assure coordination of the cooperative effort and related projects; and
4. Provide the NHTSA COTR with following required reports:

a. Data Reports: The dynamic and other data measured in each human surrogate impact test will be provided by the recipient(s) within four (4) weeks after the test is run. For each and every test performed with a human surrogate, a data package shall be submitted to the COTR. For example, were a human subject to be impacted by pendulum to the right femur and later to be impacted by pendulum to the thorax, the two (2) impacts are separate tests even though there was only one (1) human surrogate.

A data package consists of (1) high speed film, (2) paper test report, and (3) either magnetic tape or floppy disk complying with the NHTSA Data Tape Reference Guide. The NHTSA, Biomechanics Division, maintains a Biomechanics Data Base which provides information, upon request, to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, any recipient of a cooperative agreement awarded as a result of this notice must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide." A copy of this document may be obtained from the programmatic information contact designated in this notice.

b. Performance Reports: The recipient shall present one (1) hour semiannual technical performance briefings at the NHTSA headquarters building (at 400 Seventh Street, SW., Washington, DC 20590) which shall be due 30 days after the reporting period and a final performance report within 90 days after the completion of the research effort. An original and two copies of the final performance report shall be submitted to the COTR.

Period of Support

The research effort described in this notice will be supported through the award of at least one cooperative agreement. NHTSA reserves the right to make multiple awards depending upon the merit of the applications received.

Contingent upon the availability of funds and satisfactory performance, a cooperative agreement(s) will be awarded to an eligible organization(s) for project periods of up to five years. No cooperative agreement awarded as a result of this notice shall exceed $550,000 per year or $2,750,000 for five years.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or other nonprofit research organization. For profit research organizations may apply; however, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and two copies of their application package to: Cooperative Agreement Program No. DTNH22–94–R–07260, Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., room 5301, Washington, DC 20590, USA. Only complete application packages received on or before the date identified above under **DATES:** shall be considered. Submission of three additional copies will expedite processing but is not required.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which represents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

2. Applications shall include a program narrative statement which addresses the following:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of the human surrogates to be used;

d. The number, quality, and anticipated ages at death (Because NHTSA has interest in obtaining knowledge of the impact injury process and its effect on the total automotive-population-at-risk, an experimental human subject pool with ages representative of this population is highly desirable.) of the human surrogates (viz human cadavers) the applicant expects to use for this research effort along with documentation (retrospective or prospective) that provides evidence that the applicant has access to the proposed quantity, quality, and projected ages of the experimental material;

e. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities;

f. A description of the general, as well as specialized impact simulation, test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research effort; and

g. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research effort. Specific attention shall be placed upon the applicant's stated means for obtaining the quantity of experimental material necessary to conduct the proposed research effort.

2. The potential of the proposed research effort accomplishments to make an innovative and/or significant contribution to the base of biomechanical knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes.

3. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology, and anticipated results.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort, including impact simulation.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Award Selection Factors

The award selection may not be based solely on the evaluation results. Award preference may be given to an innovative or creative approach that offers a potentially significant contribution to achieve the specific objectives of this cooperative research effort. Award preference may be given to a proposal with a larger percentage of cost sharing.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in Department of Transportation 49 CFR Part 11 and in NHTSA Orders 700–1, 700–3, and 700–4. Any recipient must satisfy the requirements and guidelines

of 49 CFR part 101 and the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of 49 CFR part 11 and the NHTSA 700 series may be obtained from the programmatic information contact designated in this notice.

2. Prior to award, each recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), as well as 49 CFR part 20— Department of Transportation New Restrictions on Lobbying.

3. During the effective period of the cooperative agreement(s) awarded as a result of this notice, each agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–21, A–122, or FAR 31.2 as applicable to the recipient, the requirements of 49 CFR parts 20 and 29, and the NHTSA General Provisions for Assistance Agreements.

Issued on: May 20, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–13457 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–46; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1988 Volkswagen Golf Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Volkswagen Golf passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1988 Volkswagen Golf that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 5, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers of importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) has petitioned NHTSA to determine whether 1988 Volkswagen Golf passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1988 Volkswagen Golf that was manufactured for important into, and sale in, the United States and certified by its manufacturer, Volkswagenwerk A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1988 Volkswagen Golf to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Volkswagen Golf, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Volkswagen Golf is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Streering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating System*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from Kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.—model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.—model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.—model components.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side

rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* installation of a relay in the wiring for the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the seatbelt latch.

Standard No. 214 *Side Door Strength:* installation of doorbars.

Additionally, the petitioner states that the bumpers on the 1988 Volkswagen Golf must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date with also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 26, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–13325 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–13101.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 2, 1994, 10 a.m., meeting open to the public.

The following items were deleted from the Agenda:

Convention Regulations: Final Rules and Explanation and Justification
Foreign Nationals Brochure

The following items were added to the agenda:

Advisory Opinion 1994–9: Grant S. Cowan on behalf of Armco Steel Company, L.P. (continued from meeting of May 26, 1994)
Advisory Opinion 1994–11: Alan R. Kidston of FMC Corporation (continued from meeting of May 26, 1994)
Advisory Opinion 1994–13: Peter Bagatelos on behalf of Voter Education Project (continued from meeting of May 26, 1994)

DATE & TIME: Tuesday, June 7, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. §437g
Audits conducted pursuant to 2 U.S.C. §437g, §438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee
Briefing on Allocation Regulations

DATE AND TIME: Thursday, June 9, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:
Draft Final Rules Implementing the Commission's Responsibilities under the National Voter Registration Act, with Statement of Basis and Purpose
Administrative Matters

DATE AND TIME: Thursday, June 9, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes
Advisory Opinion 1994–14: Scott Lehman of Tsakanikas for U.S. Congress
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 94–13590 Filed 5–31–94; 3:22 pm]

BILLING CODE 6715–01–M

NATIONAL SCIENCE FOUNDATION, NATIONAL SCIENCE BOARD

DATE AND TIME:

June 9, 1994, 10 a.m., closed session.
June 9, 1994, 10:05 a.m., open session.
June 10, 1994, 8:30 a.m., open session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 9, 1994

Closed session (10 a.m.–10:05 a.m.): Minutes from May Meeting
Open session (10:05 a.m.–12:00 p.m.) and (1:30 p.m.–5:30 p.m.): Minutes from May Meeting; Chairman's Report; Director's Report; and Long-Range Planning

Friday, June 10, 1994

Open session (8:30 a.m.–12 p.m.): Long-Range Planning: Continued; and Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–13497 Filed 5–31–94; 10:29 am]

BILLING CODE 7555–01–M

Federal Register

Thursday
June 2, 1994

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918
Longshoring and Marine Terminals; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S–025]

Longshoring and Marine Terminals

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Proposed rule; Notice of informal public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise its Safety and Health Regulations for Longshoring and, to a far lesser extent, to amend its Safety and Health Regulations for Marine Terminals. The proposed rule covers cargo handling and related activities conducted aboard vessels and at Marine Terminals. The proposed amendments to the Marine Terminals standard are intended primarily to provide regulatory consistency with the proposed Longshoring ship-board rules. The proposed rules would be "vertical" standards which apply to longshoring and marine terminal activities only, except for those general industry provisions referenced within this proposed rule.

This proposal contains requirements for longshoring and marine terminal operations; the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear; other cargo handling equipment such as conveyors and industrial trucks; access to vessels; working surfaces; and personal protective equipment. Additionally, specialized longshoring operations such as containerized cargo, roll-on roll-off (Ro-Ro) and menhaden are specifically addressed.

The principal hazards addressed by this proposal are injuries and accidents associated with cargo lifting gear, vehicular cargo transferral, manual cargo handling, hazardous atmospheres and materials, and finally, those hazards posed by the more modern and sophisticated cargo handling methods brought about by intermodalism.

This provides notice of OSHA's intent to schedule informal public hearings on OSHA's proposed rulemaking on Longshoring and the related Marine Terminal provisions.

DATES: Written comments on the standard must be postmarked on or before September 23, 1994. Notices of intention to appear at the informal public hearings must be postmarked by August 24, 1994.Written comments, testimony, and all evidence which will be offered into the hearing record must be postmarked by 21 days prior to the date of the hearing to be attended. The hearings will begin at 9:30 a.m. and be held in the following cities, beginning on the following dates:

Charleston, South Carolina on September 20, 1994;

Seattle, Washington on October 19, 1994; and

New Orleans, Louisiana on November 15, 1994.

Requests for public hearings in locations other than the above must be received by July 11, 1994.

Parties who request more than 10 minutes for their presentation at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence, postmarked on or before 21 days prior the date of the hearing to be attended.

ADDRESSES: Written comments and requests for additional hearings should be submitted to the Docket Office, Docket S–025, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219-7894. Comments of 10 pages or less may be faxed to the Docket Office, if followed by a hard copy. The OSHA Docket Office fax number is (202) 219–5046.

Notice of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. S–025, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, telephone (202) 219–8615.

Actual addresses for the locations of the regional hearings in Charleston, South Carolina, Seattle, Washington, and New Orleans, Louisiana will be announced in a later Federal Register document.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION

I. Background

As a result of the high number and serious nature of accidents occurring to port workers in the United States, Congress, in 1958, amended the Longshore and Harborworker's Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*) to provide a large segment of port based employees with a safer work environment. The amendments (P.L. 85–742, 72 Stat. 835) significantly strengthened Section 41 of the LHWCA (33 U.S.C. 941) by requiring employers covered by that Act to "furnish, maintain and use" equipment, and to establish safe working conditions in accordance with regulations promulgated by the Secretary of Labor. Two years later, the Labor Standards Bureau (LSB) of the Department of Labor issued the first set of safety and health regulations for longshoring activities as 29 CFR part 9 (25 FR 1565). These standards were amended on several occasions between 1960 and 1971. Since 1971, there have been no substantive changes to these provisions.

The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 650 *et seq.*), which established the Occupational Safety and Health Administration (OSHA), directed the Secretary of Labor to adopt, under the authority conferred by section 6(a) of the Act, "Any established Federal standard" as an OSHA standard during the first 2 years of the Act. The Longshoring standards, then codified as 29 CFR part 1504, were adopted by OSHA under section 6(a) in 1971, and were recodified as 29 CFR part 1918.

The longshoring industry has changed dramatically since 1971. The methods of cargo handling and the equipment associated with those methods have undergone significant modification. Vessels designed specifically for the carriage of intermodal containers, vehicular rolling stock, and even barges, are now the most common types of ships calling at U.S. ports. By contrast, the established Longshoring standard was designed largely for activities being conducted using methods and equipment that have been overshadowed or replaced by more modern methods of cargo handling. The proposal being published today will seek to modernize OSHA's regulatory approach to deal with these changes in the industry. It is important to consider, however, that some of the older, more conventional vessel configurations, equipped with features and aspects that are addressed in the current standard, continue to call at U.S. ports. For that reason, the Agency will retain in this proposal a number of provisions whose utility, although diminished, will continue to be necessary. Nevertheless, the Agency requests the public to comment on certain provisions that it considers obsolete and no longer in use. For example, the Agency is considering deleting the provisions that address the

manually lowering or topping of booms based on a determination that these operations are no longer performed as a part of longshoring work.

On July 5, 1983, OSHA published its final rule for Marine Terminals (48 FR 30886)(Ex. 1–101). These rules were designed to address the shoreside segment of marine cargo handling. Since the Marine Terminal standards currently address equipment and situations (i.e., powered industrial trucks; conveyors; passage between levels and across openings; etc.) that have shipboard counterparts, appropriate provisions from those standards are incorporated into this proposal for shipboard cargo handling, as well. Accordingly, the Agency will rely upon background material and data used to substantiate OSHA's rule for Marine Terminals, and incorporates the docket (S–506) developed in that rulemaking.

This proposal seeks to provide a practical continuity as it addresses the more conventional and time proven methods of cargo handling along with those more modern and revolutionary. The Agency welcomes all suggestions on how to better meet this goal.

Longshoring Hazards

Traditionally, the longshore industry has been notable in terms of its accident experience. The work environment found in the marine cargo handling sector exposes workers to a greater risk of injury than is true for most other industries. In fact, in the last calendar year for which industrial illnesses and accidents are fully tabulated, this industrial sector had one of the highest rate of lost workdays in the nation. The following tables found in BLS reports (Exs. 1–109, 1–110, 1–111, 1–112, and1–113) are useful in making a comparative assessment:

Table A

Total of lost workdays (rate per 100 full time employees)	1985	1986	1987	1988	1989	1990	1991
Private sector	64.9	65.8	69.9	76.1	78.7	84.0	86.5
Construction	129	134	136	142	143	148	148
SIC 446 (449)	350	405	422	436	343	284	329

Note: These 1988 to 1991 figures are based on SIC Code 449, which includes water transportation. It should be noted that the SIC Code for water transportation was changed from 446 to 499 in 1987.

Table B

Total cases (rate per 100 full-time employees)	1985	1986	1987	1988	1989	1990	1991
Private sector	7.9	7.9	8.3	8.6	8.6	8.8	8.4
Construction Trades	15.2	15.2	14.7	14.6	14.3	14.2	13.0
SIC 446 (449)	16.3	18.0	17.0	14.5	14.7	13.5	13.9

Note: These 1988 to 1991 figures are based on SIC Code 449, which includes water transportation. It should be noted that the SIC Code for water transportation was changed from 446 to 449 in 1987.

In 1985, OSHA requested the Bureau of Labor Statistics (BLS) to initiate a survey that could be used to develop common aspects of accidents occurring within the current longshore sector (Ex. 1–73). This survey helped to point out that in spite of the increases in automation that have occurred in the industry, injuries and lost workday cases continue to remain high and the break bulk type of operation still accounts for a major portion of the injuries that occur aboard ship.

OSHA sought to validate even further the conclusions it could draw, both from this survey and from regularly published BLS occupational safety and health statistics. In so doing, the Agency reviewed data published in *Seafarer* magazine (April 1987). In an article entitled "WGMA reports safety statistics for 85–86 contract year" (Ex. 1–14), that periodical listed a number of pertinent figures that serve to corroborate the other accident information OSHA has secured. The West Gulf Report, prepared by Mr. Hal Draper, Director of Safety, Health and Training for the West Gulf Maritime Association, addressed the accident experience of several ports from Lake Charles, Louisiana to Brownsville, Texas. Quoting directly from the article:

West Gulf Report. Draper's report on West Gulf longshore accidents during the 1985–86 contract year covered a total of 1,192 incidents.

According to his analysis, 70% of the accidents occurred on board ships; the remaining 30% on the dock or in the warehouse/terminal. Cargo was involved in 30% of the accidents, 64% of which involved sacks/bags, and 12% steel/pipe. Two hundred and forty of the incidents (20%) involved the individual being struck by a moving object; 221 (19%) resulted from lifting, pushing, pulling or bodily reaction; 208 (17%) from falls from the same level-slip or trip; 142 (12%) from striking against, or stepping/jumping on an object; 130 (11%) from being struck by a falling object; and 109 (9%) from being caught in, under, or between objects. Thirteen percent of all accidents involved stevedore gear/equipment.

Another way the Agency attempted to identify the major sources of longshoring accidents for rulemaking purposes was to examine a number of fatal or near fatal accidents reported to OSHA from this industry sector during the period July 1972–March 1992. In conducting this analysis, OSHA examined these case files to determine the precise cause of the accident. A brief summary of a few of the more than 250 such accidents reviewed is provided below.

Boston, Massachusetts—August 1974. A longshoreman, seriously injured while working in the hold of a bulk cargo vessel, was placed aboard a stokes basket stretcher to be transported ashore by the vessel's cargo hoisting gear. The stokes basket had no effective means to secure the injured worker to the stretcher. While in transit, the injured worker fell out of the litter, back into the hold (Ex. 1–90).

Port Elizabeth, New Jersey—June 1978. One employee was killed and one seriously injured when an intermodal container lifting beam, being lowered to hoist the container both men were standing on, suddenly fell. The device, weighing in excess of 4 tons, crushed both employees. Compliance with proposed §1918.81(k) would have prevented this accident (Ex. 1–87).

Port Newark, New Jersey—August 1976. An employee aboard an elevator Ro-Ro ship, while in the process of discharging automobiles, drove into what was thought to be an available elevator to gain access to the ramp or discharge deck. The elevator was

actually at a higher deck. The employee and vehicle fell into the shaft and down three decks. Barricading of the open deck spaces could have prevented this accident (Ex. 1–88).

San Juan, Puerto Rico—August 1978. An employee aboard a seagoing, multi-deck Ro-Ro barge was run over and killed by a tractor trailer while the trailer was being maneuvered into its stowage position. No signalman was provided to protect employees from the hazard that ultimately killed this lasher (an employee engaged in securing cargo). Additionally, illumination was severely lacking within the confines of the vessel's below deck cargo spaces. The use of proper illumination and a signaller for this operation could have prevented the fatality (Ex. 1–89).

Port Elizabeth, New Jersey—August 1984. Two workers, while driving in a vehicle within a large Ro-Ro vessel, fell from the end of an elevated internal ramp back down to deck level. These employees thought the ramp could take them to the next higher deck, however, the ramp was not so positioned. The car they were operating landed on its roof. One employee was killed, the other was injured. Barricading of the ramp could have prevented this accident (Ex. 1–86).

Houston, Texas—July 1987. Two longshoremen were killed while positioned atop a deck stowed intermodal container. As they were performing their work, an empty forty foot container being passed over their heads became disengaged from the lifting gear and fell on them. These fatalities could have been prevented if the employees had stayed clear of the overhead drafts (Ex. 1–74).

Port of Los Angeles, California—March, 1992. One longshoreman was killed while working on top of a stack of containers on the deck of a container vessel. A container top safety device was available, but the longshoreman was not attached to it. The safety device, which was attached to the container crane spreader bar, moved and became hung up. When it released, it catapulted the longshoreman off of the stack of containers and onto the dock. This incident could have been prevented if the employee had not been working on the top of the container, or had been using fall protection if it were necessary to be working there (Ex. 1–108).

Based on the BLS data, the West Gulf Maritime Association's accident analysis, and OSHA's own analysis of fatal or near fatal accidents in the cargo handling industry , OSHA concludes that regulatory action is necessary in order to meet its mandate under the Act. See Section III, Statutory Considerations, below, for a complete discussion of OSHA's "significant risk" findings.

II. General Format of the Standard

A. Vertical vs. Horizontal Standards

This proposed Longshoring standard has been drafted in a manner that will allow it to stand by itself, i.e., to be a "vertical" standard. Vertical standards are those that apply specifically to a given industry, in lieu of any other OSHA standard. In several areas of coverage specified in the proposal's scope section, OSHA's General Industry standards are incorporated by reference. This approach follows OSHA's other marine cargo handling standard, Marine Terminals, 29 CFR part 1917 (48 FR 30886). Vertical standards can encourage voluntary compliance because they are directed to the particular problems of the industry, and because they only contain provisions that are appropriate to the industry in question. On the other hand, since many industries covered by OSHA do in fact use the same or similar equipment and processes, and therefore have employees who are exposed to the same hazards, it is usually a more efficient use of the Agency's resources to develop "horizontal" standards (those applying across industry lines). It is also more efficient to train field personnel in general safety programs tailored to the horizontal General Industry standards than to train field staff in individual programs designed for specific industries.

In 1983, OSHA promulgated a vertical standard for the shoreside aspect of marine cargo handling (48 FR 30886)—OSHA's rules for Marine Terminals. As was the case in that rulemaking, the Agency is proposing the inclusion of a list of applicable General Industry standards which will supplement the specific provisions in part 1918. This provides coverage for hazards for which the marine cargo handling industry is neither unique nor different from other industries. As an example, OSHA proposes to adopt by reference §1910.95, titled "occupational noise exposure." The detrimental effects of prolonged high levels of noise is the same whether the exposure takes place aboard a vessel or in a factory. The exposure may not be as constant or the workforce may not be subjected to the same type of noise day after day, however the potential for overexposure is there. OSHA does not feel it is necessary to write a "vertical" standard that covers exposure to noise when the General Industry standard will suffice. This is entirely consistent with the current coverage provided by OSHA rules for Marine Terminals (part 1917).

The majority of this proposed Longshore standard is a "vertical" standard. The work environment aboard ship is unique in many respects. Longshore workers must continually work in the harsh environment of the waterfront, which requires exposure both to work-related hazards, such as falling cargo, and to environmental hazards, such as drowning and working around machinery in bad weather. Longshore workers perform some of the same high-hazard tasks, and confront many of the same heavy-industry hazards, as those typically associated with the construction industry. Examples of such hazards include falls, and crushing and caught-in injuries. Cargo handling and construction work are also both weather-dependent and have a high proportion of part-time and transient employees. The extremely high occupational injury and illness incidence rates for the marine cargo handling industry, mentioned in the previous section, testify to the hazardous nature of the longshoring industry.

OSHA has decided to continue a vertical standard for many aspects of this high-hazard industry, supplemented by general industry standards where necessary and appropriate. The Agency believes that this approach is necessary to adequately address the unique hazards and working conditions of this industry. OSHA also has a vertical standard for the construction industry (29 CFR part 1926), another hazardous industry with a large workforce.

OSHA solicits comments both as to the merits and the limitations of a vertical standard for longshoring operations.

B. Performance vs. Specification

The format and substance of this standard reflect OSHA's effort to eliminate unnecessary regulations and to simplify and update others. To achieve these goals, the Agency has adopted a performance approach to writing new rules and revising existing ones. A performance-based standard identifies a hazard and the level of control required to protect against the hazard, without specifying the precise means of achieving such control, while a specification standard stipulates design and construction criteria to be met to achieve a particular safety objective. The lack of flexibility in many specification standards fails to take into account the adequacy of many existing operations and work practices and discourages innovation. In keeping with

OSHA's commitment to clarity, flexibility, and in order to encourage employers to comply with the standards, this longshore industry proposal has adopted the performance approach except in those cases in which employee safety would be enhanced by more specific requirements. The Agency is interested in receiving comments from persons who feel that certain of the proposed provisions would benefit from a greater degree of specification or from a more goal-oriented approach.

III. Statutory Considerations

A. *Introduction.* Throughout this proposal, OSHA describes the hazards confronted by employees who are engaged in longshoring activities and the measures required to protect affected employees from those hazards. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the Longshoring standard, as proposed, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "each employer shall comply with occupational safety and health standards promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that:

> . . . the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. In *National Grain & Feed Association v. OSHA*, 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See for example, *Building & Constr. Trades Dept. AFL-CIO v. Brock*, 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dept. AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 655 n. 62 (1980).) At the same time, the Agency's technical expertise and policy-making authority must be exercised within discernable parameters. The lockout/tagout and grain handling standard decisions sought from OSHA more clarification on the agency's view of the scope of those parameters. In light of those decisions, OSHA believes it would be useful to include in the preamble to this proposed safety standard a statement of its view of the limits of its safety rulemaking authority and to explain why it is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule within their parameters.

B. Congress concluded that OSHA regulations are necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats. At section 2(a) of the OSH Act (29 U.S.C. § 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress therefore declared "it to be its purpose and policy ... to assure so far as possible every working man and woman in the Nation safe ... working conditions [29 U.S.C. § 651(b)]."

To that end, Congress instructed the Secretary of Labor to adopt existing Federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees [29 U.S.C. § 655(a)]." Congress also directed the Secretary to set mandatory occupational safety standards [29 U.S.C. § 651(b)(3)], based on a rulemaking record and substantial evidence [29 U.S.C. § 655(b)(2)], that are "reasonably necessary or appropriate to provide safe ... employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [29 U.S.C. § 654(a)]."

"Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business.... Indeed, Congress thought that the financial costs of health and safety problems in the workplace were as large as or larger than the financial costs of eliminating these problems [*American*

Textile Mfrs. Inst. Inc. v. Donovan, 452 U.S. 490, 519–522 (1981) (ATMI); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp. v. Marshall*, 445 U.S. 1, 11 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America [S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), reprinted in Senate Committee on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, (Committee Print 1971) ('Leg. Hist.') at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510–511, 517]."

[T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor. When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses....Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [Id. at 518–19 (Senator Cranston)] Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

C. As construed by the courts and by OSHA, the OSH Act sets a threshold and a ceiling for safety rulemaking that provide clear and reasonable parameters for agency action. OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "any permanent health or safety standard, [it must] make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dept., AFL-CIO v. American Petroleum Inst*, 448 U.S. 607, 642 (1980) (plurality) (Benzene); emphasis was supplied in original]." When, as frequently happens in safety rulemaking, OSHA promulgates standards that differ from existing national consensus standards, it must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Thus, national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. § 655(a)).

As a result, OSHA is precluded from regulating insignificant safety risks or from issuing safety standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dept., v. Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [American Textile Mfrs. Inst. Inc., 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of, the industry')]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in ATMI that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27360 (June 23, 1978). Proposed 200 $\mu g/m^3$ PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 $\mu g/m^3$ level was not feasible for weaving and that 750 $\mu g/m^3$ was all that could reasonably be required). See also 54 FR 29245–246 (July 11, 1989); American Iron & Steel Institute, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) Although the cotton dust and lead rulemakings involved health standards, the economic feasibility ceiling established therein applies equally to safety standards. Indeed, because feasibility is a necessary element of a "reasonably necessary or appropriate" standard, this ceiling boundary is the same for health and safety rulemaking since it comes from section 3(8), which governs all permanent OSHA standards.

All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (ATMI, at 514 n. 32; *Building and Const. Trades Dept., AFL-CIO v. Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions that a safety standard substantially reduces a significant risk of harm, is both technologically and economically feasible, and is cost effective, OSHA must conduct rulemaking in accord with the requirements of section 6 of the OSH Act. The regulatory proceeding allows it to determine the qualitative and, if possible, the quantitative nature of the risk with and without regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See ATMI at 2501–2503; American Iron & Steel Institute generally.) Section 6(f) of the OSH Act further provides that, if the validity of

a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in Benzene at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Construction Trades Dept., AFL-CIO v. Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

OSHA safety rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these parameters, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The proposed revisions of the Longshoring and Marine Terminal standards comply with the statutory criteria described above and are not subject to the additional constraints applicable to section 6(b)(5) standards.

Standards that regulate hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards. Standards that regulate hazards, like explosions or electrocution, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Assn., v. OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). As noted above, section 3(8) provides that all OSHA standards must be "reasonably necessary or appropriate." In addition, section 6(b)(5) requires that OSHA set health standards which limit significant risk "to the extent feasible." OSHA has determined that the proposed revisions of the Longshore and Marine Terminal standards are safety standards, because these standards address hazards, such as falling, falling objects and crushing, that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5).

The OSH Act and its legislative history clearly indicate that Congress intended for OSHA to distinguish between safety standards and health standards. For example in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

... by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety. The legislative history makes this distinction even clearer:

[The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [Leg. Hist. at 502–503 (Sen. Dominick), quoted in *Benzene* at 648–49]. Additionally, Representative Daniels distinguished between "insidious 'silent killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (Leg. Hist. at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (Leg. Hist. at 1004). (See also, for example, S.Rep. No. 1282, 91st Cong., 2d Sess 2–3 (1970), U.S. Code Cong. & Admin. News 1970, pp. 5177, 5179, reprinted in Leg. Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg.Hist at 412; *id.* at 446; *id.* at 516; *id.* at 845; International Union, UAW at 1315.)

In reviewing OSHA rulemaking activity, the Supreme Court has held that section 6(b)(5) requires OSHA to set "the most protective standard consistent with feasibility" (Benzene at 643 n. 48). As Justice Stevens observed:

The reason that Congress drafted a special section for these substances ... was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. [Benzene, at 649 n. 54.] Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting, burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (International Union, UAW at 1314). Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (International Union, UAW at 1313, citing Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837, 843 (1984)).

The Court reviewing the grain dust standard also deferred to OSHA's reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association v. OSHA* (NGFA II), 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety.

As explained in Section I, Background, above, and Section V, Summary and Explanation of the Proposal and in Section VIII, Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis, below, OSHA has determined that marine cargo handling activities pose significant risks to employees (18 fatalities and 7,593 injuries annually) and that the provisions of the proposed rule are reasonably necessary to protect affected employees from those risks. The Agency estimates that compliance with the proposed revisions of the Longshoring and Marine Terminal standards will cost $4.7 million the first year and $1.8 million annually thereafter and will reduce the risk of the identified hazards (preventing 3 fatalities and 1,262 injuries annually). This constitutes a substantial reduction of significant risk of material harm for the population at risk of approximately 93,000 employees. The Agency believes that compliance is technologically feasible because all of the provisions of the proposed standard can be met by using currently available equipment.

facilities, supplies, and work practices. Additionally, OSHA believes that compliance is economically feasible, because, as documented in the Regulatory Impact Analysis, all regulated sectors can readily absorb or pass on compliance costs during the standard's first five years, and economic benefits will exceed compliance costs thereafter.

As detailed in Section VIII, Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis and Table 1, below, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

Standard (CFR cite)	Final rule date (FR cite)	Number of deaths prevented annually	Number of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9 to 33.4	5.9 to 33.4
HAZWOPER (1910.120)	3–6–89 (54 FR 9311)	32	18,700	153	153
Excavations (Subpt P)	10–31–89 (54 FR 45,954)	74	800	306	306
Process Safety Mgmt (1910.119)	2–24–92 57 FR 6356	330	1,917	880.7	470.8
Permit-Required Confined Spaces (1910.146)	1–14–93 58 FR 4462	54	5,041	202.4	202.4

OSHA assessed employee risk by evaluating exposure to marine cargo handling hazards. The Agency acknowledges that some industries covered by the proposed revisions of the Longshoring and Marine Terminal standards have more documented marine cargo handling injuries or fatalities than do others. OSHA does not believe that the risk associated with exposure to marine cargo handling related hazards varies according to the number of incidents documented for a particular SIC code. OSHA has set the scope of the proposed revisions of the Longshoring and Marine Terminal standards to address those situations where employees are exposed to marine cargo handling hazards, regardless of the relative frequency of incidents. The Agency believes, based on analysis of the elements of the hazards identified, there is sufficient information for OSHA to determine that employees in the covered sectors face significant risks marine cargo handling activities. Therefore, the Agency has determined that all employees within the scope of the proposed standard face a significant risk of material harm and that compliance with the proposed revisions of the Longshoring and Marine Terminal standards is reasonably necessary to protect affected employees from that risk.

IV. Review of General Industry Standards for Longshoring Operations Applicability

Of all the work environments OSHA regulates, the shipboard workplace ranks high among those that do not track easily with many of the regulations that comprise 29 CFR part 1910 (General Industry standards). For instance, subjects such as scaffolding; powered platforms; power presses; wood working machinery; abrasive wheels; forging machines; pulp and paper mills; bakery equipment; laundry machinery; sawmills; logging; telecommunications; and spray painting, all of which receive comprehensive discussion within the text of part 1910, are virtually non-existent concerns in shipboard longshoring operations. Essentially longshoring is a transport industry and, as such, is free from many of the hazards found in general industry. Accordingly, these provisions are not included in this proposed rule.

In some areas where there is current coverage in part 1918, there is similar coverage in part 1910. OSHA's primary concern is to make sure that the 1910 provisions needed to supplement the 1918 coverage are included in the proposal. For instance, subjects such as ladders; slings; conveyors; industrial trucks; cranes and personal protective equipment, which are fully addressed within part 1910, are presently addressed with a specific regard for the maritime workplace, within OSHA's current Longshoring rules. This proposal seeks to update and revise the existing part 1918 and in some instances has relied in substantial measure upon part 1910 language. In other instances, such as when addressing container and roll on/roll off operations, entirely new concepts have been developed to take account of the sometimes unique operational aspects of the modern stevedoring community.

Where the hazards present in shipside cargo handling are directly parallel to those encountered in the shoreside aspect of marine cargo handling, such as in sanitation considerations, OSHA is proposing that the language of provisions designed to address such shoreside hazards be the same as in the Marine Terminal standards in 29 CFR part 1917.

Interested parties are requested to submit any information related to the coverage of this proposed revision of the Longshoring rules. For example, are specific hazards adequately addressed in this proposal? Are longshore worker exposed to safety and health hazards which this proposal does not adequately address? Have unnecessary provisions been included in the proposal? Are there any areas of general industry coverage that have not been included in the proposal that should be? OSHA would particularly appreciate information on these issues.

V. Summary and Explanation of the Proposal

Subpart A—Scope and Definitions

Section 1918.1 *Scope and applicability.* Proposed §1918.1 describes the scope and applicability of the Longshoring standard. The Longshoring rules apply from the foot of the gangway up, to include all cargo handling related activities aboard a given vessel. It is important to remember, however, that in ship to shore/shore to ship cargo transfer operations using shore based material handling devices, all lifting device specific aspects of such transfers will be covered by the part 1917 rules. When cargo transfer is accomplished using ship's cargo gear, the part 1918 rules shall apply.

In keeping with the concept outlined in the foregoing section of this preamble (II. General Format of the Standard), certain selected provisions currently found in OSHA's part 1910 standards have been identified to have application to shipboard longshoring operations. Sections 1918.1(b)(1) through (4), (b)(6) through (8), and (b)(10) through (12)

provide coverage for hazards for which the marine cargo handling industry is neither unique nor different from other industries. These hazards are not otherwise addressed by existing maritime standards. The hazards addressed by §1918.1(b)(5) (Tools) and (b)(9) (Machine Guarding), on the other hand, are addressed by existing maritime standards but do not receive the comprehensive treatment afforded by part 1910, subpart P, (Hand and Portable Powered Tools and Other Hand-Held Equipment) and subpart O, (Machinery and Machine Guarding).

OSHA is proposing to delete the current requirements for hand tools, §1918.72, titled Tools, and replace it with Subpart P of 29 CFR part 1910, titled Hand and Portable Powered Tools and Other Hand-Held Equipment. OSHA believes that the general Industry Subpart P regulations are more comprehensive and afford better protection. OSHA proposes to do the same in the Marine Terminal regulations by replacing the paragraphs under the sections heading Hand tools, §1917.51 and replacing them with 29 CFR 1910 subpart P.

For the same reasons, OSHA is also proposing to remove the requirements under §1917.151 titled Machine guarding, and replace them with Subpart O of the General Industry standards, part 1910, titled Machinery and Machine Guarding. OSHA is also proposing to include Subpart O, Machinery and machine guarding, to the Scope and Applicability section of part 1918.

OSHA promulgated the hazardous waste operations and emergency response (HAZWOPER) standard on March 6, 1989 (54 FR 9294). OSHA'S decision to cover all emergency response was based upon the high risk associated with emergency response by untrained and unprotected employees and the need for proper training and equipment to be provided for emergency response to hazardous substance releases. This standard currently applies in its entirety to shipboard longshoring operations.

HAZWOPER divides emergency response into three separate areas: (1) Response at uncontrolled hazardous waste sites (§1910.120(l)); (2) response at Resource, Conservation and Recovery Act of 1976 (RCRA), as amended, facilities (42 U.S.C. 6901 et seq.) §1910.120(p)(8); and (3) response to emergency hazardous substance releases not covered by the previously noted paragraphs §1910.120(q). Since the activities described in the first two areas of the HAZWOPER standard do not represent marine cargo handling activities within the scope of part 1917 or part 1918, OSHA is proposing to only apply §1910.120(q) to longshore (part 1918) and marine terminal operations (part 1917).

Paragraph (q) covers employees engaged in toxic substance emergency response no matter where it occurs. This paragraph, essentially, requires employers to develop and implement an emergency response plan to handle anticipated toxic substance emergencies prior to the commencement of emergency response operations. If employers decide to evacuate their employees from the danger area when an emergency occurs and do not permit their employees to assist in handling the emergency, they are exempt from the requirements of this paragraph if they provide an emergency action plan and meet other requirements in accordance with §1910.38(a) which states:

> The emergency action plan shall be in writing * * * and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

Simply stated, if an employer decides "not to fight a fire" (i.e., not to respond to an emergency), then §1910.120(q) does not apply but §1910.38(a) does.

OSHA is proposing to delete the current requirements for hand tools, §1918.72, titled Tools, and replace it with subpart P of 29 CFR Part 1910, titled Hand and Portable Powered Tools and Other Hand-Held Equipment. OSHA believes that the general Industry subpart P regulations are more comprehensive and afford better protection. OSHA proposes to do the same in the Marine Terminal regulations by replacing the paragraphs under the sections heading Hand tools, §1917.51 and replacing with 29 CFR part 1910 subpart P.

For the same reasons, OSHA is also proposing to remove the requirements under §1917.51 titled Machine guarding, and replace them with subpart O of the General Industry Standards, part 1910, titled Machinery and Machine Guarding.

Proposed §1918.2 carries over many of the definitions from the current Longshoring regulations. However, there are some new definitions or some modifications to existing definitions that reflect changes in current custom and practice in the Longshore industry.

For example, the term "designated person", which is not used in the current longshore regulation, is used in this proposal. The term is used to identify a person who has a special skill in a particular area and has been so noted by the employer. Because of this skill, this employee is assigned to perform specific tasks in this area of expertise. While the concept of "designated person" is found throughout the current requirements, it is expressed in many different ways. This proposal tightens up the use of this concept by its consistent use of the term "designated person" throughout the standard. Some examples of the use of the term are: §1918.51(b) requires that a designated representative, in lieu of the employer, shall inspect vessel's cargo gear before use and at intervals during use; and §1918.55 (c)(7) where a designated person is one with knowledge in crane operations, specifically when using two or more cranes to hoist in unison, along with knowledge in rigging.

In addition, the current references to the "Federal maritime jurisdiction" and "navigable waters" in the definitions of "employee" in paragraph (e) and "employer" in paragraph (f) are being dropped. The current rules were originally promulgated under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941) for which the navigable waters was a jurisdictional prerequisite. With the promulgation of the OSH Act, which applies to private sector employment in workplaces in a covered jurisdiction, however, such a prerequisite was no longer necessary. Therefore, OSHA is proposing to update these rules by eliminating the reference to navigable waters in this definition.

Additionally, several new or substantially revised definitions are found in paragraphs (d), (g), (h), (j), (k), and (n) of this section. The definitions for enclosed space and fumigant are added to this section for clarity since these terms are used in the standard. In addition, they are virtually identical, with the exception of the examples, to those found in the Marine Terminal standards. The term "hazardous cargo" has been expanded to reflect the Marine Terminal's definition of "hazardous cargo, materials, substance or atmosphere." This definition goes beyond the current part 1918 definition by including references to subpart Z as well as oxygen-deficient atmospheres. Additionally, it is, in turn, consistent with the Hazardous Communication standard found at 29 CFR 1910.1200. Another new definition is integral to the major impetus for revising part 1918, as discussed above: "intermodal container." The definition for "intermodal container" reflects both the definition found in the International Labor Organization (ILO) Code of Practice for Safety and Health in Dock Work, (Ex. 1–135) and the definition

found in International Standards Organization (ISO) Standard 830, Freight Containers-Terminology, (Ex. 1–134). This definition is also being proposed to replace the current definition for "intermodal container" found in the Marine Terminal standard, §1917.2(u).

The definitions of "dockboards" and "ramps", currently found in the Marine Terminal standard, are being proposed for Longshoring, as well, with minor modification.

Certain definitions currently in part 1918 would be deleted. Existing definitions referring to the existing §1918.13, certification of shore-based material handling devices were deleted because they were superseded by the Marine Terminal standard. The existing definition of the term "shall" is being deleted as unnecessary.

Subpart B—Gear Certification

A. *Section 1918.11 Gear certification.* Since 1960, safety and health regulations designed to protect U.S. dockworkers (with particular regard to vessel's cargo handling gear) have relied upon the documentary proofs of tests and examinations mandated by International Labor Organization (ILO) Convention 32 (Ex. 1–34). In Article 9 of that Convention, units and articles comprising ship's cargo handling gear are enumerated and assigned an annual/quadrennial schedule of tests/examinations that must be attended and attested to by individuals judged to be "competent" by the national authorities of the vessel's registry. Although not a signatory to that Convention, the United States has conformed to this Convention via regulation promulgated by: (1) the U.S. Coast Guard, with regard to inspected U.S. flag vessels; and (2) OSHA, with regard to foreign flag vessels (§1918.12). The Coast Guard has promulgated cargo gear regulations that exceed those found in Convention 32, namely 46 CFR part 91, that promote safe and unencumbered operations for U.S. flag vessels trading at foreign ports. On foreign flag vessels trading at U.S. ports, however, OSHA has sole responsibility for regulating and enforcing rules that address the cargo gear U.S. longshore workers utilize.

Under Convention 32, proof load testing[1] was only required initially before being taken into service. Thereafter, components such as derricks, goosenecks, mast bands, derrick bands and any other difficult to disassemble fixed gear, were to be "thoroughly examined" every four years and "inspected" every 12 months. Other hoisting machinery, such as cranes, winches, blocks, shackles, and any other accessory gear, were to be "thoroughly examined" every 12 months.

Under Convention 32, the vessel's cargo handling gear was proof load tested initially, and then perhaps never again. After that initial test, such gear received various degrees of visual scrutiny, complemented on some occasions by non-destructive testing, i.e., a hammer test.

Convention 152, adopted June 25, 1979, requires that such proof load testing is to occur at least every five years, and applies to all ship's lifting appliances. Within Article 3 of the new Convention, the term "lifting appliance" is defined as follows:

> Lifting appliance covers all stationary or mobile cargo-handling appliances, including shore-based power-operated ramps, used on shore or on board ship for suspending, raising or lowering loads or moving from one position to another while suspended or supported. (Ex. 1–5, pg.2)

Thus, the extent of cargo handling equipment found aboard ship requiring testing and certification, heretofore restricted to specific assemblies and components (i.e., derricks, cranes, winches, etc.) is being expanded in this proposal to include all "lifting appliances" under the terms of the newer ILO Convention. This would include forklifts and other powered industrial equipment used to handle cargo that might be carried by a Ro-Ro vessel; and elevators found on Ro-Ro vessels used to move cargo from one deck level to another—in addition to vessel cranes and derricks. Under this proposal in §1918.11, all this equipment would be required to be tested and thoroughly examined initially before being put into use; retested and thoroughly examined every five years; and thoroughly examined every 12 months.

In those situations where one container is used to lift another container, using twist locks, then the upper container and twist locks become, in effect, a lifting appliance and must be certified as such.

International Aspects

As is the case with all Federal agencies whose regulations impact international trade, OSHA has developed this proposal in light of international considerations. Through both law and policy, the United States has decided that standards-related activities shall not unnecessarily be a barrier to trade. The Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq*). addresses technical barriers to trade with regard to federal regulation. This Act states in Title 19 of the U.S. Code as follows:

> §2532. FEDERAL STANDARDS-RELATED ACTIVITIES
>
> No Federal Agency may engage any standards related activity that creates unnecessary obstacles to the foreign commerce of the United States, * * *.
>
> (1) Nondiscriminatory treatment. * * *
>
> * * * * * * *
>
> (2) Use of international standards.—(A) In general. * * * each Federal agency, in developing standards, shall take into consideration International standards and shall, if appropriate, base the standards on International standards.

Additionally, and consonant with this country's position on barriers to international trade, the United States is a signatory to the Multilateral Convention on the Facilitation of International Maritime Traffic (1965) (Ex. 1–3). As a contracting government, the United States has agreed to:

> * * * Undertake to cooperate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic and keep to a minimum any alterations informalities, documentary requirements and procedures necessary to meet special requirements of a domestic nature. (Article 3)

Mindful of these international aspects, OSHA sought to formulate an acceptable approach to the vessel's cargo handling gear issue, and to other issues. The Agency requested the Department of State (Ex. 1–7) to present OSHA's tentative approach to all foreign nations whose flags may enter U.S. ports. This exercise was conducted in hope of ascertaining global acceptance. Reports back from responding foreign nations (Ex. 1–6) indicated overwhelming support for the Agency's approach to these issues, and OSHA has incorporated it in this proposal. Most nations, although stipulating that they had not as yet ratified the more recent ILO Convention, indicated that national laws recently ratified or those currently in the legislative process were at least as strong, and in some cases more stringent, than Convention 152. In consideration of this widespread international acceptance of ILO Convention 152's approach to testing and certification of cargo gear, OSHA has decided to propose it in this revision of the Longshoring standards. The Agency is interested in any additional comment on this issue that interested parties may be in a position to offer.

[1] Proof load testing, as used here, means lifting an known weight that is in excess of the safe working load (SWL) of the lifting appliance being tested.

Subpart C—Means of Access

Section 1918.21 Gangways and other means of access. This proposed section joins together two similar sections (§1918.11—Gangways and §1918.21—Gangways and Other Means of Access) of OSHA's current Longshoring rules. Clarity is improved in that rules addressing the same specific issue will no longer be situated in two different subparts of part 1918. As is the case in the current rules, gangway dimensions and characteristics are set out in proposed paragraph (a) to provide the safe access to vessels necessary for longshore workers. By using a blend of specification with performance based alternatives, the proposal lends the flexibility needed in accommodating foreign vessels. Language has been added that allows the use of materials that have been developed since the current rule was written, as long as the material has a strength equivalent to those that are listed.

Proposed paragraph (b) carries over language from the current rules, as well as the term "trimmed" found in the Joint Maritime Safety Code of the New York Shipping Association/ International Longshoremen's Association (NYSA/ILA Safety Code) (Ex. 1–2) part M, paragraph 1), and requires that despite changing conditions brought about by tides, cargo operations, etc., the gangway and its components must be wholly serviceable.

Proposed paragraphs (c) through (k) are similar to the language found in the current rules. Some paragraphs have been modified to address some problems associated with the current language. Paragraph (d) has been modified to require a safety net or suitable protection when the gangway overhangs the water in such a manner that there is a danger of employees falling between the ship and the dock. The net is required to prevent an employee from falling to a lower level. This is consistent with ILO'S "Safety and Health in Dock Work," (Ex. 1–138). A new paragraph (i) has been added to address the hazard associated with slippery handrails and walking surfaces on gangways. Paragraph (j) references §1918.92 for illumination requirements on a gangway. In summary, these paragraphs address the requirement for a safe passage from the dock to the deck.

Proposed paragraph (l) recognizes the U.S. Coast Guard's authority relating to jurisdictional matters aboard vessels having a current and valid certificate of inspection. Notwithstanding, for the purpose of this rule, if access is attained other than by the vessel's regular gangway, that access shall conform to the entirety of this section.

Proposed §1918.22 carries over language from the current rules. Both paragraphs of this section contain the standard universal criteria for rope ladders, also known as "Jacob's ladders", namely, that such ladders be either double-runged or flat-treaded, so as to provide a more substantial tread surface; that they be well maintained and properly secured to available fittings; and that they not be permitted to hang from their lashing points with slack in them.

It is often the case that such ladders are provided by the vessel when a more traditional means of access cannot be utilized. Notwithstanding, under these proposed rules the employer (who is often a contractor rendering a service to the vessel) must comply with this proposed section before employees are permitted to use these ladders.

Proposed §1918.23 also carries over language from the current rules. Paragraph (a) sets out criteria for ramps used to gain vehicular access to or between barges. Of primary importance is that such ramps be of sufficient strength for the intended load. These ramps must be equipped with sideboards that will prevent vehicles from falling. They must also be well maintained and properly secured during use.

Paragraph (b) addresses employee passage to and from certain floating craft. Under favorable conditions, it is sometimes possible to pass to and from such vessels without the aid of any device. In other than favorable conditions, however, this paragraph sets forth the criteria to provide safe passage. Of significant importance is the exception included at the end of the paragraph. That exception recognizes practical difficulties encountered on the Mississippi River system in providing traditional means of access on all occasions. When originally promulgated in 1960, the longshore rules (Ex. 1–39) took no cognizance of these special difficulties. In 1965, the Labor Standards Bureau published the following proposed clarification, (Ex. 1–40):

> In order to provide practical solutions in cases where current requirements cannot be met, because of local river and bank conditions (this section) should be amended by the addition of a provision. (p.7609)

A provision to that effect was published in the Federal register in final form on May 21, 1966 (Ex. 1–41). Historically (Ex. 1–98), this exception has been based on tidal and current conditions on the Mississippi system (see definition at proposed §1918.2(s)). OSHA's experience has thus far concluded that such exceptional conditions prevail only on this inland system; however, the Agency solicits comments from interested individuals with other information on this issue.

A sentence has been added to proposed §1924.23(c) that requires no more than two Jacob's ladders for any single barge, raft, or log boom being worked. This proposal is consistent with the requirements in §1918.25(a) which requires a maximum of two access ladders in a hatch. The term "gang" is used here and several other places in this proposal. It refers to a group of longshore persons that are assigned to a particular hold, deck, etc. on a ship for the purpose of loading or discharging cargo.

A new paragraph (e) has been added to this section to address the problem associated with the lower rungs of a Jacob's ladder being crushed between the barge and another structure by requiring that a spacer or equivalent means be used to prevent it from occurring. If the lower rungs are crushed, this could cause an employee to fall between the barge and other structure.

Another new paragraph (f) has been added to this section. This paragraph requires the a net or equivalent protection if there is a space between the vessel, barge or other structure when using a Jacob's ladder to prevent an employee from falling into the water.

Proposed §1918.24 combines the current language of the existing longshore provisions for bridge plates and ramps with the terms that apply to similar shoreside equipment within 29 CFR part 1917 (Marine Terminals, §1917.124).

In the adoption of such parallel rules, OSHA hopes to enhance the uniformity of regulation that is critical to safety performance both shipboard and shoreside. Throughout this proposal, the Agency has attempted to foster such uniformity and requests comments as to how this goal can be better achieved.

Paragraphs (a)(1)(iv) and (b)(1)(v) would be revised to require sideboards that are at least 6 inches (.16 m) high. This height is the same as found for bull rails that were in place at the time of the effective date of the Marine Terminal standard, found in §1917.112. OSHA believes that specifying the height of the sideboards will provide the necessary protection to prevent vehicles and equipment from accidently falling off the edge. OSHA requests comment from the public concerning appropriateness of the height of the sideboards. OSHA is also proposing to require the same 6

inch (.16 m) sideboards for dockboards and ramps that are in the Marine Terminal standard, §1917.124.

Proposed §1918.25 combines the current requirements for portable ladders contained in the existing Longshoring rules with the similar rules of §1917.119. For fixed ladders, however, there is a distinction between the proposed and current Longshore standard which has to do with clearance in back of the ladder rungs. The existing requirement is 4 inches (.11 m), but the proposed clearance is 6 inches (.16 m), which reflects the current ILO Standard.

Consistent with ILO's Guide to Safety and Health in Dock Work, (Ex. 1–129), OSHA is proposing that vessels built after December 5, 1981, (the date when ILO Convention 152, Occupational Safety and Health in Dock Work was put into effect), have a 6-inch (15 cm) clearance between the ladder and the surface to which it is fastened. Vessels built prior to December 5, 1981, however, may have a 4 inch (10 cm) clearance between the ladder and the surface to which it is fastened. OSHA encourages comment on this issue. (It should be noted where a fixed ladder has inadequate clearance, a suitable portable ladder could be used.)

Generally, proposed §1918.25 includes much of the current language for ladders with some modifications. Provisions have been added that reference ANSI standards for manufactured portable ladders. There are also proposed provisions for ladder maintenance and usage that are similar to what is in the Marine Terminals standard, but are new to Longshoring.

In paragraphs §1918.25(c) and (e) the phrase "positively secured against shifting or slipping" has been changed to "positively secured or held against shifting or slipping while in use". This change acknowledges that a worker(s) may hold a portable ladder in place while another worker is climbing the ladder in situations where the ladder cannot be secured and is consistent with the PMA-ILWU Safety Code, Rule 1506 (Ex. 1–145).

In addition, for the purpose of clarifying paragraph (e), where the employer can demonstrate that employees can safely use the cargo itself to climb in and out of the hold (often referred to as "safe cargo steps"), a straight ladder is not necessary.

Paragraph (j)(8) on, ladder usage, acknowledges that while some ladders may not have slip-resistant bases, they can be readily secured by lashing them in place to prevent slipping or shifting when being used.

Subpart D—Working surfaces

OSHA clearly understands that many of the falling hazards addressed in part by this and other subparts, represent working environments and physical characteristics no longer observed with the type of frequency that was the case when the current Longshoring rules were last revised. Nonetheless, conventional cargo handling methods together with more traditional vessel designs are still encountered at U.S. ports. For this reason, OSHA proposes to retain current provisions that still have application.

As an example, proposed §1918.31(c) prohibits employers from allowing work to be conducted on surfaces comprised of missing, broken or poorly fitting hatch covers. Currently, it is relatively rare to experience a vessel trading at U.S. ports, fitted with the type of removable hatch covers this provision addresses. Despite that rarity, such situations do arise.

Proposed §1918.31(d) prohibits the placing of poorly fitting hatch covers and hatch beams that would constitute a work surface. As a practical matter, it is rare to see vessels at U.S. ports fitted out with hatch beams. In those instances, however, identifying marks are usually permanently fixed to such equipment. Those marks correspond to marks found on receptacle fittings on the vessel proper. In all cases, notwithstanding the presence of corresponding marks, the employer must make sure that all hatch beams and covers are seated securely, providing a strong and stable work surface.

Proposed §1918.32(a) carries over language from the current Longshoring rule. Frequently cargo must be landed on temporary surfaces, generally presented by other cargo stows, prior to its ultimate place of rest. When this is so, it is important that employees have enough available space to work in safety upon such a surface, and that the temporary table is strong enough to safely support the loads being imposed. There are obviously many strength and size possibilities, which will be dictated by the size and weight of the drafts being landed.

Proposed §1918.32(b) has been revised to address changes that have occurred in technology and work practices. Employees working on the tops of containers are now covered by §1918.85(j), Container top safety. (For a full discussion see the preamble to §1918.85(j) below). When employees working in cargo holds, are exposed to falls of more than 8 feet (2.4 m), the edge of the working surface must be guarded by a safety net, or must be otherwise rendered safe (such as by providing guardrails or fall arrest systems) to prevent employee injury. It should be noted that proposed §1918.32(b) does not include employees working on the top of intermodal containers in a hold as this is also covered under §1918.85(j).

Of prime importance is that the intent of this provision is satisfied, rather than providing just the appearance of compliance. Many times, particularly when safety nets have been rigged, they have been allowed to become very slack, and have sometimes been secured only at their top ends. The improper rigging of safety nets compromises or even removes the protection provided to falling employees. In these very critical fall hazard situations, this provision insists that fully considered precautions are taken. The Pacific Coast Marine Safety Code (PCMSC) Rule 1016 (Ex. 1–145) is very similar in construction.

This paragraph has also been revised to distinguish between the purpose and use of vertical safety nets, which rise at right angles at the perimeter of a work surface thus preventing employees from falling, and trapeze nets, which are designed to be placed horizontally below a raised work surface to prevent falling employees from striking the surface below. Additionally, this section requires that any nets used for purposes of fall protection meet the applicable requirements.

Proposed §1918.33(a) and (b) are carried over from the current Longshoring rules. As the heading of this section indicates, these provisions address the safe performance of work on or around deck loads. Provisions for work performed by employees atop deck-stowed intermodal containers will be found at proposed §1918.85(j).

OSHA is proposing to change the title and text of §1918.34. The current title of this section is "Skeleton decks." OSHA has consulted, without success, numerous individuals from the maritime community and researched several maritime publications, textbooks, etc. in an effort to define the terms "skeleton deck" and "mechano deck." OSHA feels that the use of these terms and the practice of working cargo on these particular types of decks are obsolete. Since the hazards remain even though these terms do not, OSHA is proposing to change the title of the section to "Other decks" in order to group unique or uncommon decks; using generic language to address the hazards associated with landing cargo on such decks that are not designed for such use. OSHA encourages the public to comment on whether the terms

"skeleton deck" and "mechano deck" should be kept in the text of the standard and on whether these provisions are necessary.

Proposed §1918.35 addresses hazards longshore workers face when conducting operations around open weather deck hatchways. Vessels calling at U.S. ports are of varied designs and capabilities. Some vessels have coamings, which are the vertical structure that surrounds the hatch opening on a ship, that are substantially higher than the proposed section's minimum acceptable range (36 to 42 inches) (.92 to 1.07 m) other vessels may have no hatch coamings at all, but rather flush decks or decks with an abbreviated sill, which present substantial fall hazards to longshore workers. On such vessels, when workers work around the perimeter of open hatchways, appropriate guarding must be provided. This proposal stipulates that taut lines or guardrails attaining the acceptable range be erected on all but the working side of the hatch. This proposal mandates that stanchions or uprights used in their construction be supported or secured in a manner that will prevent them from coming accidentally loose.

Proposed §1918.37 addresses the fall hazards associated with working on the decks of lighters and barges. Proposed paragraph (a) retains language from the current rule. It prohibits the use of marginal (less than 3 feet (.92 m) wide) deck space along the sides of covered lighters or barges on all such vessels having coamings over 5 feet (1.5 m) high. Alternately, an employer must provide a taut handline or, as is most often the case, the vessel must be fitted with a serviceable grab rail.

Proposed paragraph (b), also retains language from the current rule. It prohibits working or walking on unsound surfaces. This can be a particularly important consideration on barges, in that powered industrial trucks are often brought aboard to assist in operations. The proposed rule requires a visual check of such decks before loading operations begin. If during the course of discharge operations an unsafe surface is discovered, work must be discontinued until protective measures are taken (such as bridging the unsafe surface with steel plate or barricading a deck section deemed unsafe).

Proposed §1918.38, as well as §1918.88 titled "log operations" are entirely new sections addressing log loading operations and reflect current industry practice. Section 1918.38 is based on Rules 640 and 641 of the PCMSC (Ex. 1–145); on a report on log operations submitted to OSHA's Maritime Safety Standards Office by Region X (Ex. 1–146); and a training video on log operations produced by the PMA and ILWU (Ex. 1–147). Loading logs from water presents very serious falling and drowning hazards. Thus, safe walking working surfaces are extremely important to longshore workers who are positioned offshore during log loading operations. Sound footing is essential during access to and while working on log rafts, which are in fact the cargo. The proposed requirements provide for safe access to the worksite and a safe working surface area. The working surface must be wide enough to allow for stable footing, securely fastened together, and substantial enough to support the weight of the employees on it. OSHA has concluded that the basic requirements for providing such safe surfaces should be included in this rulemaking, and seeks comment on their completeness.

Subpart E—Opening and closing hatches

Proposed §1918.41 addresses coaming clearances and provides requirements to protect longshore workers from fall hazards and from being struck by falling cargo during the process of opening up and closing hatches. Proposed paragraph (a) addresses weather deck clearances. When a smooth-sided deck load is stowed within 3 feet (.92 m) of the hatch coaming, and the available coaming height is <24 inches, a taut handline shall be provided so that employees are able to safely remove or replace hatch beams and covers. Similar language covering such situations is found in the NYSA/ILA Joint Maritime Safety Code—part C/Rule 38 (Ex. 1–2) and the PCMSC—Rule 1007 (Ex. 1–145).

Throughout this proposal, OSHA has specified that "taut" lines or "taut" handrails or guardrails be provided in certain situations where available walking or working space is compromised because of inevitable stowage or vessel design considerations. In using the term taut, as with other terms commonly encountered in maritime safety codes, OSHA is using language which is familiar in the industry under current practices. Where necessary, OSHA is proposing definitions for various terms used in the proposed standards, to ensure that these terms are uniformly understood. To be as clear as possible with regard to its intention in utilizing the term "taut" in connection with the subject lines, handrails and guardrails, the Agency states that "taut" connotes tightly and securely drawn, and as length and distance may warrant, securely fastened at intervals. The idea behind providing these taut lines, etc., is to allow an employee to rely on these objects in maintaining or regaining a stable balance in a constrained work area.

Generally, guardrails successfully serve their purpose when their height can stay within a serviceable range (42 to 36 inches) (1.07 m to .92 m). "Taut" handrails and "taut" lines, however, are sometimes required to be fitted to objects and structures of varying dimensions (such as deck cargo and the sides of covered lighters) for the purpose of enabling an employee to maintain balance and footing.

Proposed paragraph (b)(1) addresses intermediate deck hatchway clearance, and requires that a 3 foot (.91 m) clear work area be provided between stowed cargo and hatch coaming at both sides and one end of hatches with athwartship beams, and at both ends of hatches with fore and aft beams, while employees are engaged in opening or closing the hatchway. Proposed paragraph (b)(2) makes it clear that the 3-foot (.91 m) working surface under proposed paragraph (b)(1), is not required when a fall hazard is not present. Proposed paragraph (b)(3) recognizes that fitted grating over-decking, such as the type used in some perishables trades, can be considered part of the actual deck or working space (for the purposes of assessing compliance with proposed paragraph (b)(1)), if they are properly placed within the 3-foot clearance area and if they are in good condition (flush fitting and presenting a level work surface). OSHA has dropped the reference to "banana" gratings because OSHA feels it is an unnecessary reference.

Proposed paragraph (c) would require grab rails or taut hand lines to be provided where, because of wing-space structures or spare parts storage, coaming clearance is minimized. Proposed paragraph (d) advises that this proposed section is inapplicable in situations that permit the opening and closing of hatches without employees having to place or remove individual sections manually. It cautions, however, that whenever the 3-foot clearance is lacking, cargo which is likely to shift or fall must be blocked or otherwise restrained.

Proposed §1918.42, similar to §1918.41, is carried over substantively in its entirety from the current longshore rules, although some editing has been done for clarity. Provisions in this section addresses the hazards associated with handling hatch beams and pontoons, such as falling into the hatch or being struck by these removable items. Equivalent rules can

be found on section 2 of the PCMSC (Ex. 1–145) and parts C and O of the NYSA/ILA Joint Maritime Safety Code (Ex. 1–2). In summary, it is proposed that hatch beam and pontoon bridles be long enough to easily fit their attachment points. Hatch beam bridles must be equipped with attachment devices that cannot become accidentally dislodged, such as toggles. Pontoon bridles are required to have the appropriate number of legs to conform to the design of the cover. All such legs must be utilized when lifting. If all legs of a bridle cannot be used due to the design of the cover, the spare leg(s) must be prevented from free swinging. Finally, as for the construction of these bridles, OSHA requires that for proper manual guidance, at least two legs be fitted with a fibre rope lanyard, and that the bridle end of the lanyard (the end attached directly to the bridle) be constructed of chain or wire rope.

Proposed §1918.43 is generally carried over from the current longshore rules, with some changes made for clarity, a revision to paragraph (j), and the addition of a new paragraph (i). Provisions in this section address the hazards associated with handling and stowing of hatch boards, hatch beams, and pontoons, such as falling into the hatch or being struck by improperly stowed items. Similar requirements are found in Section X of the PCMSC (Ex. 1–145), part O of the NYSA/ILA code (Ex. 1–2), and ILO Convention 152.

In revised paragraph (j), tarpaulins may be used to reduce the dust emissions of bulk cargoes instead of night tents if the vessel lacks cargo gear. In these situations, OSHA requires positive means, such as placards or barricades, be taken to prevent employees from walking on the tarpaulin that is covering an open or partially open hatch. Verbal warnings or instructions do not satisfy this provision.

A new paragraph (i) is being proposed to address the hazards of unsecured materials falling from hatch covers when they are being moved overhead.

Subpart F—Vessel's Cargo Handling Gear

Proposed subpart F would apply to all gear and equipment used in cargo handling that is the property of the vessel. Examples of this type of equipment can include cranes, derricks, specialized brjdles, winches, wire rope, and shackles. This subpart addresses hazards associated with the use of that gear. This would include such hazards as using faulty gear, overloading or improperly rigging cargo gear, or improper operation of cargo gear, which can result in serious injury or death. (See Ex. 1–103.)

Proposed §1918.51 contains general requirements that apply to all cargo handling equipment that is permanently attached to a vessel.

Proposed paragraph (a) stipulates that the safe working load of the gear, whether marked on the lifting appliance itself or specified in the required certificates/gear register, shall not be exceeded. Proposed paragraph (b) requires that each component of ship's cargo handling gear be inspected by the employer before use, and at intervals during use. This requirement is more clearly worded than the existing requirement by specifying the employer's obligation to perform a visual inspection. Also, this new language more closely parallels the shoreside requirement found in 29 CFR 1917.42(a)(2). The paragraph also prohibits the use of unsafe gear. Proposed paragraph (c) provides criteria for splicing wire rope and for wire rope configuration characteristics. Additionally, the paragraph conforms the Longshore regulations to some current use criteria for wire rope that appear in OSHA's rules for the shoreside aspect of marine cargo handling (Marine Terminals—29 CFR part 1917). Proposed paragraphs (d), (e), and (f), also parallel the shore side rules. OSHA believes that the new language in this section enhances the safety of the worker in several ways. In paragraph (c), new and more stringent requirements are proposed for wire rope that is part of the ship's cargo handling gear. In addition, the new provisions (paragraphs (d), (e), and (f)) set replacement criteria for wire rope slings, natural and synthetic fibre rope slings, synthetic web slings, chains and chain slings, none of which are addressed by the existing standard.

Proposed §§1918.52, 1918.53, and 1918.54 and all address the subject of rigging and operating vessel's cargo handling gear. By and large, the requirements of these sections are found in the existing rule. Some language modifications have been made to enhance clarity. In addition, some paragraphs have new language that enhances the understanding of the provision which promotes greater compliance and eases enforcement burdens. For example, proposed §1918.53(e) adds to the existing reporting requirement of a defective winch, the following requirement "... and the winch shall not be used until the defect or malfunction is corrected." Similarly, paragraph (i) adds a monitoring requirement during operation and (k) removes a feasibility exception based on design that is no longer necessary today due to technological improvements.

OSHA wishes to raise the issue and solicit comment from the public regarding whether or not to delete §1918.52(b). This paragraph addresses the use of chain topping lift stoppers and clamp type stoppers that are used to manually lower and raise the boom. This method of topping the boom is a potentially dangerous operation and has been largely replaced by the use of electric topping lift winches, which do not require the use of stoppers. However, OSHA understands that as a result of the breakup of the Soviet Union, vessels which had not been allowed to sail into the U.S. because of restrictions placed on Soviet bloc countries, are now calling on various ports of the United States. In some cases, these vessels are old, and have types of cargo handling gear that had been largely replaced by more modern gear. In light of this occurrence, OSHA solicits public comment on this issue.

A new paragraph has been added, §1918.54(a), that addresses the hazard associated with the poor practice of rigging guys or preventers so that they chafe against other guys, preventers, or stays. This practice can cause the vessels's cargo gear to fail as the chafing can cause the wires to separate. This can lead to serious injury or death as the gear and cargo fall down on the deck or into the hold.

Proposed §1918.55 covers deck cranes permanently affixed to a vessel. The existing rule only addresses one of the hazards—the guarding of the swing radius. The new requirements more completely address the hazards encountered in the use of ship's cranes. These rules become necessary due to the widespread replacement of winches and booms by ship's cranes on newer vessels. In addition, the new provisions closely parallel similar shoreside requirements in part 1917 and other OSHA crane standards.

This section prohibits the use of cranes which develop a visible or known defect that impacts on its safe operation. In addition, the operator's position must be well maintained, with good visibility provided through the operator cab's glass. During cargo operations, areas that are within the swing radius of the body of revolving cranes and are accessible to employees must be guarded to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane. Paragraph (c) of §1918.55 also addresses the danger of employees being caught between shipboard gantry cranes, such as would

be found on a LASH (Lighter aboard ship) vessel or a self contained container ship, and fixed structures on deck along the path of the cranes travel. (Ex. 1–103, cases 26 and 27).

Crane brakes must be monitored throughout the workshift. If they are unable to hold the load, the crane must not be used. If cranes are used in tandem, a designated person (see definitions) must direct the operation with special emphasis on positioning, rigging and movement.

Subpart G—Cargo Handling Gear and Equipment Other than Ship's Gear

Proposed Subpart G applies to all cargo handling gear utilized in cargo operations that is not part of the vessel (ship's gear). Proposed §1918.61 is very broad in its coverage. In paragraph (a) it stipulates that all gear and equipment brought aboard a vessel must be inspected before and during its use by the employer or a designated person to determine its condition. If, upon inspection, an unsafe condition is found, the gear must not be used until deficiencies are corrected.

Proposed paragraph (b)(1) is carried over from the current longshore rules and requires that the Safe Working Load (SWL) of the gear not be exceeded. Proposed paragraph (b)(2) is new. This paragraph requires the marking of the SWL on special stevedoring gear with a safe working load (SWL) of over five short tons. OSHA believes that this is a basic requirement (Ex. 1–151), and that most gear in use is already marked with the SWL on it.

Paragraph (c), which is similar to the current language, stipulates that the weight of any article of stevedoring gear that exceeds 2,000 pounds (1 short ton) must be plainly marked with the weight of that article before being hoisted by the ship's gear. Examples of such stevedoring gear are container handling lifting frames and certain multi-point engagement bridles. It is important to consider the weight of such articles when evaluating safe working loads of the ship's cargo gear.This is because the weight of the gear must be added to the weight of the load being lifted to determine the actual load, which together cannot exceed the SWL.

Proposed paragraphs (d) and (e) remain unchanged and address certification and certification procedures.

Proposed paragraph (f) addresses special stevedoring gear fabricated of components that are not common, off-the-shelf type items. For example, gear room constructed spreader bars for heavy lift cargo, special lifting devices for unique pieces of cargo, or bar pallet bridles will have some components that are not marketed or purchased with a specific cargo handling use in mind. Such certification must be performed in accordance with paragraphs (d) and (e) by an agency accredited by the Department of Labor under 29 CFR part 1919 before being put into use. Also, all intermodal container spreaders that are supplied by the stevedore for hoisting afloat shall be similarly inspected, tested, and certificated. Special stevedoring gear with a SWL of five short tons or less can continue to be inspected and tested as a unit by a designated person.

OSHA is also proposing that all cargo handling gear covered by §1918.61(f) with a SWL greater than 5 short tons be inspected and proof load tested every four years in accordance with the chart found in paragraph (f) of this section. This inspection and proof load test may be done by an agency accredited by the U.S. Department of Labor under 29 CFR part 1919, or it can be done by a designated person.

This change to the existing longshore regulations parallels similar requirements found in 29 CFR part 1917, Marine Terminals. For consistency between the two parts, OSHA is proposing in this rulemaking, to change §1917.50(b)(5) to reflect the 5 long ton exemption that is being proposed in §1918.61 and to require the periodic testing of special stevedoring gear and container spreaders every four years by a designated person, shoreside as well as shipside.

OSHA feels that this will provide additional protection for those employees that use special stevedoring gear and will eliminate any confusion that may currently exist by requiring special stevedoring gear with a SWL greater than five long tons and spreaders supplied by the employer to be inspected, tested, and certificated whether it is used by shore-based material handling equipment or by cargo handling gear afloat.

Proposed §1918.62 covers all miscellaneous gear that is not part of ship's gear, such as all slings, shackles, hooks, blocks and pallets (loose gear), employed aboard a vessel for use in cargo handling operations. The hazards addressed by this section are those generally associated with an employee's being struck by falling objects, i.e. dunnage, gear or cargo, when the gear fails. The provisions in this section helps to assure that loose gear used in the longshoring operation is both adequate in strength and size and in good enough condition to safely perform the operation. To foster uniformity, the Agency proposes the same requirements for miscellaneous gear as required in shoreside cargo handling at 29 CFR 1917.42. (See 46 FR 4194 and 48 FR 30895 for a full discussion of the rationale for these provisions.)

OSHA proposes a comprehensive system of tables (See Appendix II) that will be utilized in the event that manufacturer's recommendations/ certificates are not immediately available at the worksite for safe working load assessment. The tables are primarily based on ASME B30.9–1990 (Slings), (Ex. 1–148), as well as requirements applying to wire rope clips and shackles currently contained in the Agency's rules for Marine Terminals. It is OSHA's position that the manufacturers's recommended use and safe working load criteria, given the wide universe of international fabrication of all miscellaneous gear, are the most reliable factors to utilize in determining safe usage. However, the Agency appreciates that certificates or manufacturers' use recommendations may not be instantly available in certain circumstances. For instance, when inbound pre-slung drafts of cargo are ready for discharge at a given port, certificates or use recommendations might not be found aboard the vessel. Because such pieces of miscellaneous gear are not "ship's gear," it is likely that no data on them will appear within the ship's collection of certificates. Likewise, such gear cannot be properly classified as "stevedore supplied gear," for the stevedore will not have known the characteristics of the slings until the hatch section is actually observed. In these circumstances, the tables found in Appendix II can be relied upon to provide a realistic safe working load.

In accordance with I.L.O. recommendation 160 (Ex. 1–8), OSHA, in proposed requirement §1918.62(h)(5)(ii), has added wording to prohibit the use of wrought iron in new parts of lifting appliances or loose gear. As a practical matter, wrought iron is rarely seen on vessels that are trading today. However, as with many of the regulations in this rule that have reduced application, there is the possibility that such conditions may still exist, and for that reason the relevant standards are being left in the proposal. OSHA invites the public to comment on this matter.

Finally, a new paragraph is proposed to be added, (g)(2)(vi), that adds an additional criterion to cause a synthetic web sling to be removed from service. If warning threads or markers that the manufacturer has designed to indicate excessive wear or damage are visible, than the sling must be removed from service. Proposed §§1918.63 and

1918.64 provide requirements for the use of chutes, rollers and both gravity and mechanically powered conveyors. OSHA proposes to bring into part 1918 the requirements that cover such pieces of equipment within the shoreside (29 CFR 1917.48 and 1917.49) rules. In this manner, no regulatory disparity will exist with equipment that often physically originates on shore and extends onto the ship. (See 46 FR 4208 and 48 FR 30900 for a full discussion of the rationale for these provisions as adopted in the Marine Terminal standard.) Notable among the changes brought about by bringing those shoreside rules aboard vessels, is the requirement that powered conveyors be locked out and tagged during most maintenance, repair, and serving. Also, that same procedure would be required in most situations that require the removal of a jam or overload on the powered conveyor system.

Proposed §1918.65 covers the use of all mechanically powered vehicles brought aboard vessels to conduct or assist in cargo handling operations. Included in this category of equipment are all industrial trucks and all bulk cargo moving vehicles. In that these same vehicles are similarly utilized in the shoreside aspect of marine cargo handling, the hazards are essentially the same. These would include, among others, exceeding the safe working capacity of the vehicle; cargo falling on the operator either from stowage on the vessel or from being handled by the vehicle itself; improper maintenance which could lead to unsafe operation of the vehicle; and the falling hazards associated with the lifting of personnel by mechanically powered vehicles. Therefore, OSHA has proposed to track the requirements found in §1917.43 that are applicable to this class of equipment. (See 46 FR 4197 and 48 FR 30896 for a full discussion of the rationale of these provisions as adopted in the Marine Terminal standard.) Additionally, the Agency is proposing a requirement for roll-over protection on bulk cargo moving vehicles (such as the type used to trim and position bulk cargo in underdeck spaces). Such protection is required on similar pieces of equipment used in construction industry settings, where the hazard posed by turnover also exists. OSHA seeks comment on whether this provision provides adequate protection shipside and whether similar protection is needed shoreside.

OSHA is proposing, in §1918.65(g), that vehicles purchased after the effective date of the final rule shall be equipped with parking brakes. OSHA believes that, although most older equipment may not be equipped with parking brakes, equipment that is currently being manufactured is generally equipped with such brakes. A parking brake is especially important when working Ro-Ro type vessels where the ramps can have a steep grade.

Proposed §1918.66 covers all cranes and derricks which are not part of a vessel's permanent cargo handling gear, but are placed aboard a vessel temporarily to conduct cargo operations. As an example, mobile and crawler type cranes are at times positioned upon barges and thereupon transported to locations adjacent to a vessel to load and discharge cargo. Given that these hoisting devices are identical at both the shoreside and shipboard location, the hazards associated with the operation of this equipment are basically the same. These would include, among others, exceeding the safe working capacity of the crane or derrick; improper operation; improper maintenance; exposed mechanical moving parts; falling hazards associated with lifting personnel; and crushing hazards. Therefore, OSHA has relied upon its rules for cranes and derricks found in 29 CFR 1917.45 to provide regulatory consistency to the marine cargo handling industrial sector. (See 46 FR 4201 and 48 FR 30897 for a full discussion of the rationale of these provisions as adopted in the Marine Terminal standard.)

In one obvious departure from the foregoing principle, the Agency has chosen not to propose requirements for load indicating devices within this section for shipside cargo handling. Usually such devices rely upon boom radius (outreach) as a component determinant in arriving at a load indication. When afloat, however, boom radius can be compromised by load and stability factors, resulting in indications that are not accurate. OSHA seeks comment from interested persons as to whether this approach provides adequate safety. In addition, the Agency solicits comment on alternative means of preventing overloads of cranes used aboard ships. Are there reliable alternate devices (that do not use radius as a central component in arriving at a load indication) that are sufficiently developed to accurately indicate the weight of the load? Would load moment indicators provide equal or better protection. Are some systems more precise than others? What other procedures could be employed to prevent overload conditions?

Additionally, proposed §1918.66(c)(2) requires that the hoisting mechanism of cranes and derricks, when being used to hoist personnel, shall operate in the power up and power down mode with automatic brake application when stopped. This provision is similar to the requirements found in the personnel hoisting section of the OSHA Construction standards at 29 CFR 1926.550(g)(ii)(D). Earlier OSHA had proposed such a rule for all cranes in the Marine Terminal Proposal (46 FR 4237) but comments and other record evidence convinced OSHA that, at the time, this would be infeasible for mobile cranes. The final Marine Terminal standard, promulgated in 1983, therefore, only applied this provision to overhead and container gantry cranes.

However, in 1988, OSHA issued its Construction standard for Crane or Derrick Suspended Personnel Platforms, (29 CFR 1926.550(g); 53 FR 29116). This rulemaking reexamined the feasibility of the controlled load lowering provision and, based on the record evidence, OSHA determined that controlled load lowering was both feasible and necessary when using cranes to hoist employees. For a detailed discussion, see 53 FR 29122.

In light of these findings, OSHA is proposing to include the controlled load lowering provision in this part, and to amend part 1917 (§1917.45(j)(2)) to cover all cranes and derricks, including mobile cranes. OSHA wishes to emphasize that hoisting employees by crane is *not* a safe practice and should be used only where other means are not feasible. OSHA solicits comment on this issue.

Proposed §1918.66(c)(3) is a new requirement has also been taken from the from OSHA's Construction Safety standards applicable to hoisting personnel. This requires that a crane used to lift personnel be equipped with an anti-two block device. This is a device which prevents the hoist block from coming into contact with the head block of the boom. Such "two-blocking" can occur when the operator is not paying attention to how high the hoist block is in relation to the head of the boom. After contact, continued hoisting of the block can cause the block to separate from the load line, or break the load line itself, causing the hoist block and load to fall. OSHA feels that this requirement is necessary to prevent serious injury or death to employees being hoisted by a crane. In the 1988 construction rulemaking, this requirement was also found to be both necessary and feasible.

Proposed §1918.67 carries over the exact requirements currently found in OSHA's Longshoring rule at §1918.75. Paragraphs (a) and (b) both provide that the employer must obtain permission from the officer in charge of the vessel

whenever internal combustion or electrically powered tools, equipment or vehicles are brought aboard, and whenever the ship's power is needed for operating the employer's electrical tools or equipment. These requirements are prudent, in that such employer-provided equipment may be incompatible with vessel systems and could lead to electrical and ventilation problems, among others.

Proposed §1918.68 provides for the effective grounding of all portable electrical equipment, such as saws, drills, grinders, etc., through a separate equipment conductor that either runs with or encloses both circuit conductors. This represents a clarification of the current rule. Double-insulated tools and battery-operated tools are excluded from the requirements.

Proposed §1918.69 is a section titled "Tools." The current requirements with the same title are found in §1918.72, which addresses the safety devices that are required on portable tools, generally, and portable circular saws specifically. OSHA believes that the current OSHA General Industry standards, subpart P, titled "Hand and Portable Powered Tools and Other Hand-Held Equipment" comprehensively address the subject of portable tools. The hazards presented by these tools in this industry are no different than in general industry. Rather than repeating these requirements here, OSHA has decided to reference them in this proposal.

Subpart H—Handling Cargo

Proposed Subpart H specifically covers the cargo handling process. These sections (§§1918.81–89) address the hazards encountered by longshore workers while loading and unloading cargo. The primary hazards involve situations where the employee falls or is struck by cargo during the operation. In this subpart, OSHA is proposing to retain many of the rules currently found within subpart H of the current Longshoring standards (part 1918); to carry over applicable regulatory language from the Agency's rules for the shoreside segment of marine cargo handling (part 1917); and to add new requirements to account for occupational situations that are both unique to the shipboard workplace setting and up to date in their coverage of intermodal transport systems.

Sections 1918.81 through 1918.84 address those hazards common to the handling of break bulk (or general) cargo. They require proper slinging, building, bulling and stowing drafts of cargo in order to prevent cargo from coming loose from the draft and falling on or tipping over on workers.

Proposed paragraph (a) of §1918.81 is a general requirement for safety in the hoisting of slung drafts (loads hoisted by a sling or slings). Many factors can result in an unsafely slung draft. For instance, the wires of the sling may be placed on or around the cargo in a manner that causes a load to become unstable once it is hoisted. Such a situation can be recognized and effectively handled simply by rearranging the placement of the sling. Also, multi-tiered drafts are sometimes hoisted in a very unstable condition that is caused by one tier resting off center of another. Even a slight slacking of the gear can cause drafts slung in this manner to come apart. Readjustment of such drafts before hoisting can easily remedy that unsafe condition.

Proposed paragraph (b) requires that slings attached to the lifting gear for handling more than one draft in succession be positively engaged to the hoisting system. This is usually accomplished by shackling the bridle (or sling) directly into the falls. Mousing (closing off) the throat of the cargo hook assembly, is not permitted.

Proposed paragraph (c) provides protection for a common hazard encountered in break bulk cargo operations; that of being struck by sliding pieces of cargo or dunnage (shoring materials) that fall from the draft while in transit. There are at least two ways to correct such a situation: the first is to reconfigure the sling so that the top layer of the cargo is effectively engaged; the second is to secure the potential "sliders" to themselves (by banding them, for instance) or to the more substantial part of the draft.

Proposed paragraphs (d), (e), and (h) are virtually identical to the current rules but are modified somewhat for clarity. Proposed paragraphs (f) and (g), on the other hand, are derived from the Marine Terminal standard which address the hoisting of "unitized loads." Unitized loads are loads that are banded or strapped together into a unit. Hoisting hazards with such loads occur when the bands are used to hoist the load but were not designed to do so; and when hoisting is performed when the banding is damaged. (See full discussion at 46 FR 4189.)

Proposed paragraph (i) requires that loads not be hoisted unless the crane or winch operator can clearly see the draft at all times, or, alternatively, can clearly see the signals given by a signal person who is observing the draft. This is particularly important in that many break bulk vessels in current use and under construction are being fitted with revolving deck cranes. When using booms rigged in union purchase (the rigging of two booms together to be used as one lifting unit) the position of the boom head (and thus the location of the load's ultimate place of landing) is predetermined, rarely changed, and fairly reliable. By contrast, in using deck cranes, the position of the boom bead can be varied easily. Loads, therefore, can be landed at many more locations, causing increased exposure of personnel to being struck by loads. Effective signaling requires a clear observation of the load by the signalperson and of the signalperson by the operator.

Proposed paragraph (k) provides that the employer must require employees to stay clear of the area beneath overhead drafts or descending lifting gear. The employer is obligated to train certain employees in correct and safe procedures associated with the job, and to require that employees adhere to the well established and enforced work rules that are contained in that training. (See full discussion at 46 FR 4194.) OSHA is also proposing to include the same language in the Marine Terminal standard in §1917.13(h).

Proposed paragraph (l) prohibits riding of the load or the cargo engaging means. This precludes the utilization of any cargo or any cargo engaging device (hook, clamshell, grapple, etc.) as a personnel conveyance. This proposed paragraph does not cover, however, the riding of loaded intermodal container spreaders, which is addressed in §1918.85(g). In accordance with proposed §1918.23(b), specific latitude is afforded longshoring operations taking place on the Mississippi river system, where the use of a personnel basket may be used. However, careful consideration and consultation with the Agency is important in the exercise of that latitude.

Proposed §§1918.82 and 1918.83 (a) and (b) address the hazards of cargo becoming inadvertently dislodged from an improperly built draft or improper stowage and falling or shifting, thus striking workers. The language is virtually identical to the current longshore rule. §1918.83(c), however, addresses a different hazard—losing workers in the hold of a ship. Such a hazard is greatly enhanced when the worker is working alone or in an isolated area, such as in tanks or reefer compartments. Also, workers trimming grain could be lost in the cargo. To deal with these hazards, the proposed and current rules require an employee check-in, check-out system or frequent checks thereby accounting for the safety of employees working in these conditions.

Proposed §1918.84 addresses the "bulling" of cargo. Bulling is the horizontal dragging of cargo (across a deck space) with none of the weight of the cargo supported by the hoisting wire(s). In practice, this procedure is accomplished with power generally provided by the cargo winch (with the hoist runner led out through the heel block), and then to an angled system of "fairleads" that provide mechanical advantage in achieving a horizontal pull on the cargo. The paragraphs that comprise this section are all taken from the current part 1918 regulations, but have been somewhat clarified and reordered into a more logical sequence. They are also covered (in part) within the NYSA-ILA Safety Code (Ex. 1–2) and the PCMSC (Ex. 1–145).

Proposed §1918.85 applies to containerized cargo operations of any form. The proposed paragraphs track both the current Longshoring standards of part 1918, as well as the shoreside requirements found in the Marine Terminals rule (part 1917). In summary, each intermodal container (see definition at §1918.2(h)) must be marked with its gross, net, and tare (empty) weights. Generally, containers must be weighed *before* being hoisted aboard a vessel, to arrive at an actual gross weight. No container is permitted to be hoisted aboard a vessel if its actual gross weight exceeds either the maximum gross weight marked on the container or the safe working load of the gear that is being utilized to load the ship. In the case of containers coming from foreign ports, container weights must be determined by utilizing data provided in shipping documents or, as is most often the case, by weights shown on cargo stow plans.

Proposed paragraph (b) addresses the topic of overloaded intermodal containers. This issue has raised a good deal of international concern (Exs. 1–120, 1–121, 1–122, 1–123, 1–124, 1–125, 1–126). The proposed provisions largely reflect the current rules in both the Longshore and Marine Terminal standards. OSHA feels that the protection afforded by its rules as they pertain to outbound (export) containers, namely that with few exceptions all are weighed before hoisting, will permit very few overweight loads going out from U.S. ports. The reliability of manifested or stow plan weights of containers coming into U.S. ports, however, appears to be in serious question as documented by the previous exhibits. The question then becomes, whether there is a better method of determining the actual weights of these containers, and how should such a method be implemented in the standards. The Agency requests interested persons to submit comment into the record concerning both as to the Agency's perception of the problem, and what better regulatory approach OSHA may take in seeking resolution. For instance, instead of relying upon the proposed language of this section, should OSHA require that container handling gantry cranes (currently exempted from the rule requiring a load indicating device—§1918.74(a)(9)(viii)) be fitted with such a piece of equipment?

In addition, a new proposed §1918.85(b)(6) has been added as a result of OSHA Instruction STD 2.2 dated July 3, 1989 (Ex. 1–114). Prior to the issuance of this instruction, the rule required closed containers loaded only with automobiles to be weighed. This instruction (and the language of this paragraph) allows closed dry van containers that have been loaded with vehicles to be loaded onto a vessel without being weighed on a scale. By contrast, other loaded containers, other than open top containers and containers solely used for the carriage of compressed gases, have to be weighed on a scale before being loaded onto a vessel. The reasoning behind the Instruction and this paragraph is that the weight of the vehicles inside a container will not exceed the net weight that the container itself is designed to carry. There are, however, three conditions that must be met in order for this exception to apply. First, the container must only contain assembled vehicles and no other cargo; second, the container must be marked on the outside so that an employee can readily discern that the container is carrying vehicles; and finally, the vehicles must have been loaded at the marine terminal. This paragraph is also to be proposed to be put into the Marine Terminal standard as 29 CFR 1917.71(b)(6).

Proposed paragraph (d) addresses the hazard of handling a defective container. Although existing §1918.85(d) addresses the inspection of both outbound and inbound containers for visible defects, the proposed language does not mention the limitation of outbound or inbound. With regard to outbound containers, the hazards associated with handling a defective container are effectively covered by §1917.71(g) of the Marine Terminal standard. In this paragraph, OSHA chooses not to limit the inspection requirement to only inbound containers since certain other containers, including possibly defective ones, may need to be shifted in order to discharge an inbound container. Since a defective outbound container can create an identical hazard to the worker as does a defective inbound container, this proposal makes no distinction between the two. Finally, the provisions for handling a defective container remain the same as the current requirements: special safe handling or emptying of the container.

In proposed paragraph (e), the Agency would require that employees be required to stay clear of the area beneath suspended containers. Accidents of an extremely serious nature have occurred in recent years (Ex. 1–37, 1–87) that highlight the need to propose this provision. Additionally, the Agency has such a requirement in its shoreside rules (§1917.71(d)(2)).

Proposed paragraph (f) on lifting fittings contains identical language to that found in the Agency's shoreside rules (§1917.71(f)). Discussion is warranted, however, on the need to apply paragraph (f)(1)(i) on board ships. Often, particularly in below deck stowage on conventional break bulk vessels, it may be tempting to utilize ship's gear or shoreside mobile cranes and rig four leg bridles with hooks (engaging the four top corner castings) to facilitate easier stowage. In handling loaded containers, this practice is dangerous and is prohibited. The International Cargo Handling Coordination Association (ICHCA), has published a paper entitled "The Safe Handling of ISO Freight Containers with Hooks * * *" that clearly outlines the inherent dangers of this practice (Ex. 1–13) as well as methods to accomplish stowage safely in such situations. Additionally, other international standards exist (Exs. 1–115, 1–116 and 1–117) that recommend that loaded containers only be lifted vertically when being handled from the top. Any method of lifting containers that is not vertical places undue stress which could lead to failure of the container. OSHA believes that this regulatory approach is well taken and reasonable.

In proposed paragraph (g), the Agency requires that a safe means of access and egress be provided to each employee who, due to the nature of the work, must work atop stowed containers—both above and below deck. In practice, most employees gain such access by riding aboard safety platforms installed on container crane lifting frames. Such means are permissible when conducted in a manner consistent with design requirements found in the shoreside rules (§1917.45(j)). While the shoreside rules already apply whenever a shore-based crane acts as the personnel conveyance, this proposed paragraph (which incorporates by reference the

shoreside design criteria) provides for the same requirements to apply whenever shipboard equipment carries out the same function.

Proposed paragraph (h) applies on vessels so equipped, to any loaded intermodal container spreader. It is well known throughout the industry that there are significant risks associated with riding a loaded container spreader. "Free falls" (or the unintended release of a container from a spreader), although infrequent, occur only while under load (Exs. 1–25 and 1–26). Additionally, having riders aboard a loaded spreader adds to the responsibilities of the crane operator, and whose attention is already occupied with the task of getting the containers to their intended location. The Agency is proposing a similar prohibition for the shoreside aspect of marine cargo handling (part 1917) as part of this proposal, proposed §1917.45(j)(9).

In proposed paragraph (i), OSHA would require (when safer methods are available) that ladders not be used to gain access to the tops of containers that are stowed greater than two high. The Agency deems gaining access by means of a properly designed and conveyed personnel platform (such as those often found on intermodal container spreaders) as being safer than employing ladders in climbing to heights that can attain 50. ft or more (Ex. 1–10).

Proposed paragraph (j) covers the hazard of falling from the tops of intermodal containers. This hazard has long been recognized by the stevedoring industry as both extremely dangerous and difficult to prevent.

Although constituting a small percentage of the total number of shipboard accidents in the United States, falls from the tops of containers have resulted in a number of serious occupational injuries and fatalities (Exs. 1–18, 1–19, 1–20, 1–21, 1–22, 1–23, 1–24, 1–43, 1–67, 1–68, 1–100, 1–108). As early as 1968, U.S. terminal operators recognized the need to improve container top safety. Matson Terminals, Inc., in conjunction with their parent ocean operator, Matson Navigation Company, developed the first system of container top fall protection within the worldwide intermodal network (Ex. 1–53). In that system, Matson provided for a "D" ring fixture to be installed within the roof of each company-owned intermodal container. Employees working aloft were provided with a safety belt and lanyard that could be secured to the "D" ring anchorage. For a number of reasons, use of the system proved to be difficult, and it is not widely used today.

In 1970, OSHA's predecessor agency, the Bureau of Labor Standards, was contacted by the Coast Labor Relations Committee of the International Longshoremen's and Warehousemen's Union, who raised this issue specifically. In their letter of August 24, 1970 (Ex. 1–50), the Coast Committee asserted:

> Consider if you will the dangers attendant to working atop containers. They are not equipped with skidproof surfaces, there are no protective railings, and there are no requirements that safety belts be provided. In dry warm weather such work is dangerous enough, but the dangers are critically compounded when workers must labor atop these during windy and wet weather. At the very least, BLS regulations ought to provide that * * * safety belts be [required] for men working aloft.

As the containerized transport revolution progressed during the 1970's and into the 1980's, and intermodal containers become more common in the cargo handling trades, container top exposures increased proportionately. At that time, there was no specific container top safety provision in the Longshoring standards. The Agency issued citations under the General Duty Clause (Section 5(a)(190) of the Act and §1918.32(b) of OSHA's rules for Longshoring (Exs. 1–139). The latter provision states, in the context of applying to stowed cargo and temporary landing platforms:

> When the edge of a hatch section or stowed cargo more than 8 feet high is so exposed that it presents a danger of an employer falling, the edge shall be guarded by a safety net of adequate strength to prevent injury to a falling employee, or by other means protection equal protection under the existing circumstances.

Although there were questions regarding the applicability of §1918.32(b) to container operations, it was determined that the provision did indeed have application to container top on-deck exposures. In an Instruction to the Field (CPL 2–1.17) dated August 30, 1982, the Agency's policy on the issue was spelled out (Ex. 1–49). In that instruction, OSHA determined that although the §1918.32(b) provision applied, there would be situations where the abatement of the container fall hazard was not feasible. In such situations, the instruction noted:

> A violation (of §1918.32(b)) shall not be issued; however, OSHA should recommend and encourage the employer to work toward a solution and assist the employer in every way possible to effect a means of protection by advice, consultation and dissemination of information obtained during other inspections.

With the onset of containerized cargo handling, it became necessary to secure containers (not placed in cell guides) to each other to prevent unintentional movement during transit. To achieve this stability, workers placed stacking cones in the corner castings of the container ("coning") while the containers were being loaded on the ship. While the containers were unloaded from the ship, workers removed stacking cones from the corner castings of the container ("deconing"). The original stacking cones were replaced in the early 1970's by conventional twistlocks which eliminated the need for some lashing but still required workers to climb on top of the containers to place or remove them. Today twistlocks are the most commonly used fitting for securing freight containers onboard vessels (Ex. 1–140). Semi-automatic twistlocks, developed in the mid 1980's, eliminate the need for some lashing but also eliminate the need for workers to go on top of the containers for the purposes of coning and deconing. While some work performed on container tops remains unaffected by the use of SATLs, most of the work that would otherwise require workers to go atop containers could be eliminated. The use of these devices could, effectively, "engineer out" exposure to container top falling hazards.

Industry efforts to find feasible methods for container top fall hazard abatement received a significant impetus when, on June 27, 1985, Longshore Division members of the International Longshoremen's and Warehousemen's Union (ILWU) called a work stoppage that put at a standstill all container operations at the ports of Los Angeles and Long Beach, California. The work stoppage (Ex. 1–42) punctuated the ILWU's concern over a series of work related deaths that occurred over a 14-month period. Although only one of these occupational fatalities was attributable to container top exposure, the labor union insisted that an effective work rule to minimize the hazards associated with container top work be instituted, and asserted that such a work rule was central to averting a continued work stoppage.

On July 1, 1985, the ILWU and the Pacific Maritime Association (PMA), acting as management's representative, agreed upon a package of 25 work rules that were specifically designed to enhance safety at container terminals. That successful management and labor agreement led to the resumption of work.Internationally, a number of national and multi-national organizations are aware of and have

acted upon the problem. The International Labor Organization, in its Code of Practice for Safety and Health in Dockwork (Ex. 1–130) specifically requires that:

> A person gaining access to the top of a container should be adequately protected against the danger of falling where appropriate by wearing a suitable safety harness properly tethered, or by other effective means, whilst on the container.

In its Directions for Safety in Dockwork, the National Swedish Board of Occupational Safety and Health (Ex. 1–131) provides, in pertinent part, that:

> Work on top of a container is only permissible if measures have been taken to prevent falling down.

In the Netherlands, the Inspectorate of Dock Labor notes (Ex. 1–44) that:

> For general containertop [sic] safety in most cases the recommendations of I.L.O. and ICHCA are followed.

In the port of Hamburg, Germany, a "lash basket" designed by a dockworker (Ex. 1–45) rides underneath the container spreader and moves between container stows, minimizing containertop exposures. Also, in the port of Bremerhaven, a specially designed "rigger box," which is similar in configuration to some U.S. designs, protects dockworkers who go on top of containers in that port (Ex. 1–52).

In the wake of a fatal accident that occurred in a New Zealand port in 1979, the New Zealand section of ICHCA responded by conducting and publishing a study, entitled: "Container Top Safety—An Overview" (Ex. 1–46). In that study, ICHCA analyzed the problem and a number of possible solutions, among them having the employee tethered to a fixed anchorage. Other tentative solutions arrived at by a number of worldwide locales were also discussed.

OSHA believes that longshore workers who work on container tops are exposed to fall hazards that can cause serious injury or death. Containers are typically stacked from one to nine below deck and one to six above deck. The loading and unloading procedures typically require a worker to place and remove container stacking alignment cones in and from the container's corner castings. This means that workers performing these tasks are regularly exposed to falling hazards of up to 90 feet (27.3 m).

Within the last few years, advances have been made in the technology of securing intermodal containers which have had a dramatic effect on container top safety. The use of positive container securing devices or systems, such as semi-automatic twistlocks (SATL) and above deck cell guides, can nearly eliminate the need for workers to work on the tops of containers thereby eliminating the falling hazard. Although OSHA has participated in an ongoing dialogue with industry, labor, the international cargo handling community, and others interested in how these technologies can improve worker safety, actual record evidence is somewhat limited. However, OSHA's information does include a comprehensive study prepared by a safety expert under contract to OSHA that addresses the hazards associated with containerized cargo handling (Ex. 1–139); an ICHCA Safety Panel Research Paper addressing the use of semi-automatic twistlocks (Ex. 1–140); a time-and-motion study comparing the use of conventional twistlocks (also referred to as manual twistlocks) with semi-automatic twistlocks (Ex. 1–141); safety information produced by the United Kingdom (U.K.) addressing jammed container fittings (Ex. 1–142); an article published by a U.K. terminal association that addresses the freeing of jammed twistlocks (Ex. 1–143); and a newsletter from an insurance company addressing container twistlocks (Ex. 1–144).

The ICHCA study is the most comprehensive study on the SATL experience (Ex. 1–140). This study defines SATL at page 3 as follows:

> Semi-Automatic Twistlock (SATL)—A twistlock which will automatically engage in the locked position when the locking mechanism has been triggered by the weight of the container as it is landed onto another container or deck foundation.

Since prototypes were first developed in Japan in the mid 1980's, manufacturers around the world have made improvements on the design which enhance both durability and reliability. (Id.) In fact, the ICHCA study indicates the existence of approximately 22 different models of SATLs (Id. P. 6). Manufacturers indicate that, with proper use and maintenance, the average lifespan of the SATL in the marine environment would be about the same as a conventional twistlock—about 10 years (Id. p. 59).

As indicated in both the ICHCA study (Id.) and the OSHA study (Ex. 1–139), the use of SATLs is widespread throughout the world and the United States. In fact, OSHA estimates that over 25 percent of ships calling in U.S. ports are already utilizing SATLs. Proponents of the use of SATLs argue that the device avoids accidents and saves money. Unlike conventional twistlocks, which must be inserted by workers on top of the container and manually locked, semi-automatic twistlocks are inserted into the bottom of the container by workers standing on the dock and lock automatically when placed upon another container. Both SATLs and conventional twistlocks can be unlocked by workers standing on the deck of the ship using an actuator pole. In the case of unloading with the conventional twistlock, the upper container is then removed leaving the twistlocks on the top of the lower container. The major operational distinction is that workers must remove conventional twistlocks from the top of a shipboard container before the spreader can attach to the corner castings, while the SATL is designed to remain attached to the bottom of the container being unloaded. SATLs are then removed by workers standing on the dock. This operation using SATLs, therefore, eliminates worker exposure to falling hazards. Finally, proponents argue that the use of SATLs enhances productivity and reduces lashing costs. (Ex. 1–140, p. 76; Ex. 1–141). In fact, a time-and-motion study that compares the performance of conventional twistlocks to that of SATLs indicates an increase in productivity in the range of 25 to 29 percent. This translates to a 11.1 percent reduction in stevedoring costs (Ex. 1–141, p. 4 and 5; Ex. 2). To the extent that this study is representative of all container cargo handling operations affected by this rule, it indicates substantial reductions of fall hazards by the use of SATLs. OSHA seeks comment from interested parties including any additional data or studies that address this issue.

As indicated above, another advancement in securing containers in transit that eliminates the need for workers to go on top of containers is the development of above deck cell guides. Cell guides are rigid, structural members that form cells where containers are stowed. These cell guides allow for the ready placement of containers in a manner that prevents movement once so placed. Although cell guides in the hold are common in container ships, above deck cell guides are far less common, constituting only 2 percent (Ex. 2, pgs. 2–19) of container ships calling at U.S. ports.

In addition, OSHA is aware of the existence of positive container securing devices other than those discussed above, such as the SeaLand framing system (Ex. 1–57). OSHA believes that use of the term "positive container securing devices" is broad enough to allow for innovative technological improvement.

While the use of SATLs is the most widespread method of positively

securing containers that eliminates the fall hazard, OSHA is aware of certain problems that have been encountered with their application, use and design. (Ex. 1–140, 1–142, 1–143,1–144). The Agency is working closely with those international standards setting organizations responsible for developing design and use specifications. In this rulemaking, OSHA solicits relevant information regarding the use of SATLs.

Proposed §1918.85(j) addresses the hazards associated with working on the tops of containers. In keeping with OSHA's hierarchy of controlling hazards, this paragraph requires the use of feasible engineering controls. In proposed paragraph (j)(1) a definition for "fall hazard" is provided in a footnote. The definition seeks to narrow the elevated work surfaces where fall hazards exist in order to reflect the reality of a changing work surface. A longshore worker working on the top of containers for the purpose of loading or unloading a layer of containers is working on an elevated work surface that can increase or decrease at the rate of 320 square feet (29.4 m^2) every few minutes. OSHA believes that such a rapidly changing elevated work surface is unique to this industry. For example, five 40-foot containers stowed side by side present a work surface of approximately 40 foot (12.2 m) by 40 foot (12.2 m) (1600 square feet)(147.2 m^2). According to this definition, falling hazards (absent weather considerations) only exist within 3 feet (.92 m) of the perimeter or 3 feet (.9 m) by 148 feet (45.1 m) (444 square feet) (40.8 m^2). By contrast, the hazardous area on top of a single container is 252 square feet (23.4 m^2) of the 320 square feet (29.4 m^2). The definition makes it clear that it is the unprotected edge where the hazard exists, and not necessarily the entire work surface. Additionally, any gap of 12 inches (.31 m) or more on a horizontal surface formed by containers is considered an unprotected edge and a falling hazard would exist under this definition. (For further discussion of the gap issue see 51 FR 42685 and 53 FR 48186). Finally, OSHA believes that any work within 3 feet (.92 m) of the unprotected edge constitutes a hazard (See Ex. 1–139).

Another important element of this definition is the vertical distance necessary to constitute a fall hazard. OSHA believes that, in this industry and in this work operation, 10 feet (3.0 m) is the appropriate vertical distance. There are several considerations that leads OSHA to this conclusion. The height of the overwhelming majority of intermodal containers range from 8 feet (2.4 m) to 9½ feet (2.7 m) (Ex. 1–139). Therefore, an employee working on top of a one-high container where the surface is less then 10 feet (3.04 m) would not, by definition, be exposed to a fall hazard. However, such containers are usually worked off ladders, not the top. Also, if such a container is stowed on a raised surface, such as a hatch cover or pedestal, that puts the top of the container at 10 feet or over, then any workers on top would, by definition, be exposed to fall hazards. The unique working surface in this operation coupled with heightened awareness of the longshore worker and the absence of accident data at this distance further assures OSHA that 10 foot is the appropriate height.

OSHA is aware that an opposing view exists. Labor is of the opinion that OSHA should make this vertical height 8 feet (2.4 m) to be consistent with the proposed requirement §1918.32(b) where a fall hazard is considered to exist over 8 feet (2.4 m) when handling non-containerized cargo (Ex. 1–150). OSHA wishes to fully assess all factors attendant to this issue, and solicits all pertinent views and data on the appropriate height for fall protection.

Two final considerations in the definition of a fall hazard are with regard to the elements and the "adjoining surface." When weather conditions are such that the vision or footing of workers on top of containers is impaired then a fall hazard will, by definition, exist. The proposed standard requires such workers to be protected by fall protection, regardless of the fall distance or their proximity to the edge. OSHA notes that unsure footing on container top work surfaces created by oil or grease is addressed in the housekeeping section, §1918.91, of this proposed standard. In addition, in the Marine Terminal standard, OSHA defers to adverse weather conditions by prohibiting terminal crane operations in high-wind conditions (§1917.45(g)).

The other consideration involves the measurement of the vertical distance from "the adjoining surface." Informal discussions between OSHA staff and various affected parties have indicated concern that this phrase must be carefully defined in order to avoid confusion in the maritime community. An enforcement concern is a that vertical height measurement might be made from the elevated surface to an adjoining surface which would not be the landing surface in the event of a fall. Should the term, "adjoining surface" be further clarified by adding either performance or specification language? For example, the term could read, "adjoining landing surface (in the event of a fall)"; or "adjoining surface with a minimum 8 by 8-foot area (2.4 m by 2.4 m)." OSHA solicits comment on this issue.

In view of the recent technological improvements in positive container securing devices indicated above, OSHA feels that many work operations, notably coning and deconing, that exposed workers to container top fall hazards can now be eliminated. As noted above, SATLs have proven to be particularly effective when container gantry cranes are utilized (Ex. 1–140). In fact, the use of these devices in these circumstances can, in most instances, eliminate the need for workers to go on top of containers. In light of this, three years after the date of publication of this proposal, proposed §1918.85(j)(1) would prohibit the performance of any work, notably coning and deconing, on top of containers that can be eliminated by the proper use of these devices. OSHA has estimated that over 25 percent of ships calling at U.S. ports already utilize SATLs (Ex. 2). Since it is OSHA's policy to allow a reasonable time to come into compliance with final standards, the proposed compliance date for the implementation of engineering controls would be three years.

OSHA is optimistic that exposures to container top fall hazards will significantly decrease with the expanded deployment of positive container securing devices worldwide. At the same time, the Agency is sensitive to the magnitude of a phase-in process for SATLs. Consequently, OSHA is proposing a lengthy effective date of this section of three years from the date the proposed standard is issued. Consonant also with the Agency's policy, OSHA will continue to disseminate information to employers and employees in this industrial sector, as to how other operations throughout the nation and the world are approaching the problem.

OSHA recognizes that positive container securing devices will not entirely eliminate the need for workers to go on the top of containers. Certain container placement or securing tasks, in addition to coning or deconing, must be performed. In these situations (e.g., securing bridge clamps or releasing jammed twistlocks), a comprehensive fall protection program must be implemented.

Where cranes other than container gantry cranes are used to handle containers, OSHA recognizes that the use of SATLs may not be feasible. Precise placement capabilities of a container gantry crane are far superior to other lifting devices, thus facilitating the use of SATLs. This enhanced capability is due to the four point

suspension system of the gantry crane, which provides greater stability and control of the container being handled, enabling the crane operator to place the container without assistance. Container operations where the spreader is suspended from a single point, on the other hand, have far less stability and control and typically requires the assistance of other employees in the placement of containers. In these circumstances, employees can frequently be exposed to fall hazards. In light of the discussion above, even when the use of SATLs is feasible when other than gantry cranes are being utilized, the need for employees to work on container tops in the handling of containers may not be eliminated. Therefore, OSHA would not require the use of positive container securing devices when containers are not being handled by container gantry cranes.

Nonetheless, there is nothing in the proposed standard that would prohibit an employer from employing SATLs where a single point suspension is in use. However, under these circumstances, SATLs in the container being placed have been shown to jam or puncture the top of the container below with improper alignment (Ex. 1–140). OSHA solicits all pertinent views and information on all issues.

With regard to the feasibility of fall protection, OSHA recognizes that, in this industry, there may be particular instances when even fall protection may not be feasible. An example of circumstances where fall protection may not be feasible is the placement of an overheight container on a chimney stow using gear that requires the manual release of hooks. In these situations the proposed standard requires the employer to:

1. Make a determination that an employee will be exposed to a fall hazard but that the use of fall protection is not feasible;
2. Alert the exposed employee about the hazards involved; and
3. Instruct the exposed employee how to best minimize the hazard.

OSHA wishes to emphasize that such a situation is not common and that when they occur, the burden is on the employer to fully comply with these requirements prior to the actual exposure. In fact, the OSHA study indicated that a "specific set of circumstances could not be framed" where fall protection might not be feasible (Ex. 1–139, p. 1). Furthermore, situations that will be considered infeasible for fall protection will be narrowly construed in the enforcement context. A footnote in the standard refers to non-mandatory Appendix III which provides examples of situations where it may be considered infeasible to use fall protection. Where feasible, however, OSHA will require that fall protection be provided.

Proposed §1918.85(k) establishes the technical requirements necessary to provide a fall protection system that is tailored to the handling of containers. Most of the requirements in this paragraph are basic to any occupationally related fall protection system. These include all of the paragraphs with the exception of (k)(7) and (k)(10), and are based on the PCMSC (Ex. 1–145), American National Standards Institute (ANSI) consensus standard Z359.1–1992 and the OSHA standards §§1910.66 and 1926.104. Essentially, these requirements address the design, selection, care and proper use of a personal fall protection system. In addition, §1918.85(k)(7) and (10) have been specially crafted for the container top situation. Paragraph (k)(7) addresses the situation where a container gantry crane, or its extension, is being used as the anchorage point for the fall protection system in use. Under these circumstances, the crane must be placed in the slow speed mode and equipped with a remote shut-off switch in the control of the tied off employee. In addition, an indicator must be present to inform the employee when the remote is operational. OSHA seeks comment on whether the indicator should reflect that both the slow speed mode and the remote shut-off are operational.

The other proposed requirement unique to this work operation, paragraph (k)(10), addresses the situation where the employee is being transported by a device, such as a safety cage, attached to a container gantry crane spreader. Such a device is required to have a means of attachment to the spreader in place in addition to the primary attachment mechanism of the spreader (hydraulic twistlock mechanism) to prevent accidental disengagement. OSHA is aware of several instances where accidental disengagement of a load has occurred (Ex. 1–25, 1–26). This secondary means of attachment is intended to minimize the potential for injury if accidental disengagement were to occur.

A final issue for discussion in this section is Paragraph (k)(13) where an employee retrieval procedure in the case of a fall must be established. It has been suggested that local emergency response personnel be consulted in the development of this procedure in order to assure that rescue or retrieval efforts do not exacerbate any injury. OSHA believes that such a consultation would be prudent.

OSHA invites comment on all issues related to container top safety and encourages the submission of relevant views and information.

Proposed §1918.85(l) addresses container operations that require employees to work along unguarded edges other than on container tops. In these situations, fall protection meeting the requirements of paragraph (k) of this section must be provided where the fall distance is greater than 8 feet (2.4 m). This primarily addresses work operations such as lashing or locking and unlocking twist locks from other surfaces, or signalling to direct the placement of containers. Frequently, this work operation requires employees to work in elevated positions that remove the fall protection that would have normally been provided by the ship's coaming or railings. OSHA recently investigated a fatality where an employee fell 34 feet (10.3 m) from a lashing platform that was inadequately guarded (Ex. 1–149).

Proposed §1918.86 is a new section that addresses operations aboard vessels that accommodate Ro-Ro (Roll-on/Roll-off) traffic.The emergence of Ro-Ro vessels is a fairly recent development and were not addressed in the current rules. Along with container operations, this section proposes new provisions that address advances in modern technology in the marine cargo handling industry. Examples of such vessels are car carriers, which facilitate the import and export automobile trades, and stern or side port combination carriers, which provide water carriage for wheel mounted as well as containerized cargo. Commonly such vessels are fitted with ramps that extend to the dock or wharf, and are fitted with ramps internally or, alternatively, are fitted with cargo elevators (lifts). In this manner, cargo is either driven through the vessel from deck to deck until reaching its final stowage location, or hoisted by cargo elevator to its proper deck and then driven to its final stowage location. Once positioned in its stowage location, the wheeled cargo is lashed to securing fittings that are provided on the deck. In such operations, lashing personnel are exposed to being struck by vehicular traffic. In addition, other workers involved with loading or unloading wheeled cargo, both drivers and pedestrians, are exposed to traffic hazards. OSHA is aware of a number of accidents (Ex. 1–78, 1–89) that are attributable to this process, wherein employees are interspersed with vehicles in a closely confined,

marginally illuminated and poorly traffic managed space.

In proposed paragraph (a), OSHA would require an organized system of traffic control to be established and maintained at each entrance and exit ramp. The confluence of vehicular and pedestrian traffic in Ro-Ro operations, and thus the area where substantial accident potential is most pronounced, is the area on and around access ramps. With this mode of cargo carriage on the increase, accident potential is expected to increase proportionately. Ramps inside the vessel, although generally not as congested as ship-to-shore access lanes, must also be addressed by the traffic control system if they experience a periodic traffic flow that warrants such control. In developing this rule, OSHA considered positions taken by the International Labor Organization in their Code of Practice for Dock Work (Ex. 1–106), which provides that:

> A system of movement control of vehicles used in loading and unloading ships should be effectively and continuously applied.

In assessing other national requirements, the Agency found that Sweden in its Dock Work Directions issued by the National Board of Occupational Safety and Health (Ex. 1–136), also requires that:

> A traffic guard shall be stationed wherever motor vehicles need to be directed, e.g., on roll on-roll off ramps, narrow wharves and places where there is traffic crossing and the view is limited.

Clearly, shipside traffic control is just as necessary as it is in the shoreside environment. In OSHA's preamble to the Marine Terminals standard, the Agency emphasized (46 FR 4200) in its assessment of the importance of traffic control at the shoreside marine terminal setting:

> * * * the importance of these practices to employee safety cannot be over estimated.

Given the close relationship between shoreside and shipboard vehicular utilization, it is appropriate that OSHA's rules addressing the two be complementary.

Proposed paragraph (b) addresses the hazard of exceeding the capacity of the ramp used to transfer cargo. As a result of ramp failure, the likely injury to occur is drowning or being crushed in the vehicle. Ramps must be plainly marked with their load capacity and these capacities must not be exceeded (Ex. 1–5).

Proposed paragraph (c) provides protection for employees that use the ship's ramp for access. In such situations, OSHA proposes that a physical separation, i.e., a barrier, be provided to separate the employee and the vehicles. Often vessels are fitted out in this manner (Ex. 1–84). However, should it be the case that a particular vessel is not so fitted, it is a matter that is easily rectified. When the design of the ramp prevents physical separation of pedestrians from vehicles, a signalperson shall direct traffic, and shall not allow concurrent use. Additionally, OSHA proposes to require that such ramps utilized for pedestrian access be fitted out in the same manner as would a traditional pedestrian gangway (see §1918.21).

Proposed paragraph (d) requires that ramps be properly maintained and secured. This is consistent with §1918.24(b) which addresses maintaining and securing portable ramps.

Proposed paragraph (e) recognizes that in many of the modern generations of Ro-Ro vessels, internal ramps are elevatable. Such a construction feature allows for multiple access destinations, depending upon the placement of the ramp. If a ramp is placed in such a manner as to allow access to a given deck, thereby creating a void in another access route (that could perhaps lead to a substantial drop or fall), this paragraph provides that the incomplete route be clearly identified and barricaded. OSHA has investigated at least one (Ex. 1–86) occupational fatality in which this circumstance was apparent.

Paragraph (f) requires that all brake air lines be connected and tested prior to commencing operations. The proper operation of brakes is necessary when operating inside a Ro-Ro vessel that typically has ramps with steep grades.

Proposed paragraph (g) requires that flat bed and low boy trailers be marked with their cargo capacity and not be overloaded. These operations typically employ the use of trailers not designed for over-the-road use such as low boy trailers (sometimes referred to as "mafi's") that allow access to low deck height spaces found in Ro-Ro vessels.

Proposed paragraph (h) is analogous to OSHA's current weight requirement for intermodal containers. It would require that cargo to be handled via the ship's ramp be either marked with its weight or have such weight clearly marked in a written record.As a practical matter, vessel stow plans most always contain such data.

Proposed paragraph (i) requires tractors to have sufficient power and braking capacity to safely operate on Ro-Ro vessels.As previously noted, this is especially important in negotiating tight spaces and steep grades on Ro-Ro vessels.

Proposed paragraph (k) would require that internal combustion engine vehicles only be operated when adequate ventilation exists or is provided. It also provides guidance in determining acceptable levels of air contaminants generated by the internal combustion process, by referring the reader to the appropriate section of this part and part 1910, subpart Z (which is referenced in subpart A of this proposal. In most situations, the vessels themselves are fitted out with ventilation systems at all decks. It has been the Agency's observation that a number of purpose built Ro-Ro vessels possess ventilation systems that function remarkably well (Ex. 1–72), monitoring ambient air for various air contaminants as well as explosive properties.

Proposed paragraph (l) would require that cargo be secured to prevent sliding loads. This addresses the specific hazard of cargo falling off trailers while in transit on Ro-Ro vessels.

Proposed paragraph (m) would require that authorized persons, equipped with high visibility vests (or equivalent protection), be the only employees permitted on any deck where Ro-Ro operations are being conducted. Requiring only high visibility vests (or equivalent protection) and eliminating the allowance of using decals or reflectors is a departure from what has been allowed in the Marine Terminal standard. As is noted in Section VI of this preamble, OSHA proposes to eliminate the allowance of decals or reflectors in §1917.71(e) because of problems experienced with the use of decals, reflectors, and similar items. The reflective area of a decal on a hard hat is obviously less than that of a vest. Also, the reflective value is lost during daylight hours or whenever the wearer takes off the hard hat. A number of serious accidents (Exs. 1–78, 1–89) have occurred in the past due to the nature of the work involved in such cargo operations. This paragraph, along with the signalling requirements in proposed paragraph (n) that follow, are expected to enable employers to avoid vehicle-related accidents onboard ships. Paragraph (n) addresses signalling requirements for maneuvering vehicles into stowage positions while other personnel are in the adjacent vicinity.

In proposed §1918.87, OSHA sets out requirements for the utilization of shipboard elevators (lifts). Elevators are most common on a number of different Ro-Ro and Combination carrier vessel designs. The hazards addressed by this section are cargo falling from an improperly loaded elevator; and from wheeled cargo or employees falling into

open spaces in the deck created by a moving elevator. In approaching the issue of elevator usage, the Agency remained mindful of foreign vessel design prerogatives. Consequently, the four paragraphs proposed within this section, are protective of U.S. longshore workers obliged to use such installations, but are not expected to have an impact on any other nation's vessel designs.

In summarizing this section, OSHA would require that safe working loads of elevators be determined and adhered to. As a "lifting appliance," shipboard elevators are part of a complement of gear that comes under considerable discussion in ILO Convention No. 152 (see discussion of Subpart B—Gear Certification). As such, shipboard installations of elevators will require certification of safe working loads as well as the posting of elevator capacity. In practical terms, the employer's responsibility with regard to this paragraph is relatively simple to discharge. The requirement for evenly distributing the weight(s) to be lifted, particularly when considering the various drive mechanisms providing power to the elevator platforms, is an important provision.

Proposed paragraph (c) also is an important requirement that, while allowing the driver of a vehicle to remain at the vehicle's controls, prohibits other persons from riding the elevator to other decks. Of necessity, the sides of many shipboard elevators are unguarded while in transit. Riders, therefore, would be exposed to falls from sometimes significant heights. The ILO's Code of Practice for Dock Work (Ex. 1–107) addresses this issue in much the same manner.

In proposed paragraph (d), OSHA addresses a problem that both this Agency and the earlier Labor Standards Bureau have recognize as needing attention (Ex. 1–82). This provision would require that if fall hazards are created by open decks during the operation of shipboard elevators, the decks shall be barricaded. OSHA believes that under current international practice most installations will already be effectively guarded. In those situations, however, where the installation falls short in providing this safeguard, the employer must take the initiative in acquiring and effectively utilizing the required barrier protection.

Proposed §1918.88, "Log operations," as previously mentioned in the preamble discussion of proposed §1916.38 "Log rafts," is also an entirely new section addressing the hazards associated with loading logs from the water into a vessel. This is a particularly hazardous operation both because of the location where it occurs (on the water) and the nature of the cargo. Logs that are loaded from the water usually have been in the water for a long period of time, causing them to absorb water. The extra water adds to their weight and also loosens the bark, making the log surface very unsure and slippery. The proposed provisions of this section have been taken from both existing longshore regulations and from the ILWU-PMA Pacific Coast Marine Safety Code (PCMSC) (Ex. 1–145). In addition, these new requirements are supported by record evidence developed by OSHA personnel in Region 10 (Ex. 1–146).

Proposed paragraph (a) is taken from PCMSC Rule 417 (Ex. 1–145) and addresses the hazards associated with unstable logs that could be in the hold of a vessel creating a situation where employees could be injured or killed should the logs shift. Employees must not be in spaces in the hold when and where logs being loaded could strike them.

Proposed paragraph (b) addresses the hazard associated with the physical condition of the log surface, which may be slippery if there is no bark, or otherwise hazardous if the bark is loose and slides off the log as the employee is stepping on it. Employers must provide appropriate footwear to employees that have to climb on the log. Such footwear typically are spiked, also known as "caulked" shoes, may be styled like a sandal that attaches to existing footwear, and specifically designed for working logs (Ex. 1–146, pp.13–14).

Proposed paragraph (c), which is taken from the current longshore 1918.96(f), requires that lifelines be furnished and hung over the side when working log booms or cribs.

Proposed paragraph (d) is also taken from the current longshore regulation §1918.23(c), and requires that a Jacob's ladder be provided for each gang when working a log boom. However, in accordance with the provision in proposed §1918.23(c), no more than two Jacob's ladders are required for each log boom being worked.

Proposed paragraph (e) has also been taken from the current longshore regulations, §1918.96(e), and requires that a U.S. Coast Guard approved life ring with at least 90 feet (27.4 m) of line be in the vicinity of the work area.

The final paragraph, (f), requires that a rescue boat be available when employees are working on log rafts or booms. This requirement is similar to that found in Rule 638 of the PCMSC (Ex. 1–145). This addresses the hazard of employees falling into the water while loading logs and being carried away by the river current and possibly drowning. The requirement of a rescue boat would allow an employee who falls into the water to be quickly rescued.

Much of the proposed language in this section is based on rules found in the Pacific Coast Marine Safety Code (PCMSC) (Ex. 1–145), which has been negotiated by the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union. In addition, OSHA believes that the proposed requirements reflect the current safe industry practice.

OSHA requests comment from the public concerning the completeness of these proposed regulations pertaining to handling logs from the water.

Proposed §1918.89, addressing hazardous cargo, is carried over from the existing Longshore standard (§1918.86). The same language is found addressing this issue when at shoreside cargo handling operations (§1917.22). Proposed §1918.89 and the Hazard Communication rule that is referenced in the "Scope and Applicability" paragraph, §1918.1(b)(6), complement one another in covering employee notification and procedures for handling hazardous cargo. OSHA requests comment from the public on whether §1918.89(a) and (c), and similar language in §1917.22(a) and (c) is repetitious in light of the Hazard Communication rule, keeping in mind that HazCom is referenced in both Parts. (In addition, the exposure of employees to toxic and hazardous substances is addressed in subpart B of part 1917, in proposed subpart I of part 1918 and in subpart Z of part 1910.)

Subpart I—General Working Conditions

In 1987, OSHA extended the coverage of the Hazard Communication standard (HazCom) (29 CFR 1910.1200) to all employers with employees exposed to hazardous chemicals in their workplaces. As a result, subpart I of part 1918 was amended to include the requirements of that standard as §1918.90. Basically the HazCom standard requires such employers to provide information to their employees concerning hazardous chemicals by means of hazard communication programs. These programs would include the use of labels, material safety data sheets (MSDS), training and access to written records. In addition, distributors of hazardous chemicals are required to ensure that containers they distribute are properly labeled, and that a material safety data sheet is provided to their customers.

On August 24, 1987, OSHA, in expanding the coverage of this rule, also

made certain revisions that address the handling of sealed containers of hazardous materials, such as is usually done in longshoring work. Specifically, OSHA stated at 52 FR 31861:

> There are a number of work situations where employees only handle sealed containers of chemicals, and under normal conditions of use would not open the containers and would not expect to experience any measurable exposure to the chemicals. Such work operations include, for example, warehousing, retail sales, *marine cargo handling*, and trucking terminals. (Emphasis added.)

OSHA recognized, nonetheless, that even under these circumstances, the potential for a hazardous exposure could occur.

> It is reasonable to assume, however, that all such containers are subject to leakage and breakage, and these employees are in fact potentially exposed by virtue of the presence of these hazardous chemicals in their workplaces. Because of this potential exposure, they need information to protect themselves form the hazards of these chemicals in the event such an emergency situation occurs. (Id.)

Proposed §1918.90 consists solely of a cross-reference to the Scope and Applicability section of the proposal, specifically §1918.1(b)(6), which references the Hazardous Communication standard, §1910.1200. OSHA has decided to reference the Hazard Communication standard in the scope section of this proposal as one of the part 1910 provisions applicable to longshoring. This would have no effect on either the enforceability or the applicability of HazCom to longshoring. OSHA proposes to do the same in the Marine Terminals standard (part 1917).

The primary HazCom obligations that apply to longshoring are found in §1910.1200(b)(4). This paragraph sets out the basic duties of employers: (1) not to remove or deface labels affixed to containers of hazardous chemicals; (2) to maintain and provide access to any MSDS's that are received for hazardous chemicals while the chemicals are in the workplace; and (3) to obtain an MSDS when one is not received but an employee requests one. In addition, the employer must train employees in accordance with the provisions of the rule to ensure they are protected in the event of a spill or leak. The Agency seeks comment on this different approach.

Proposed §1918.91 addresses housekeeping. In assessing the types of accidents that most occur in shipboard cargo handling, one fact has remained constant: many involve slips, trips, and falls (Exs. 1–14, 1–73). Housekeeping factors cause a substantial number of such accidents. Staying with the principle of providing a uniform regulatory approach to shipboard and shoreside occupational safety and health, OSHA proposes, in this section, to bring into part 1918 those applicable provisions of part 1917 that cover the same hazards on shore. Those remaining provisions, which are vessel-specific, would be retained from the current part 1918. In addition, OSHA considers lashing gear that is used with containers, roll-on, roll-off cargo, and, in particular, automobiles, to be "equipment," as referred to in paragraph (a).

Proposed §1918.92 provides illumination requirements for cargo handling work aboard vessels. Here again, OSHA remains consistent with its shoreside rules in requiring 5 footcandles (average) (54 lux) of illumination at cargo operations. In proposing this standard, OSHA believes that it will not only remain uniform with its shoreside rule (§1917.123), but also remain consistent with good illumination safety principles. (Ex. 1–152)

In crossing from one location to another, in this case shore to ship, it is a well-recognized safety practice to provide uniform lighting. On this topic, the American National Standard practice for Industrial Illumination (ANSI/IES RP–7–1991) (Ex. 1–152) states the following:

> Alternate areas of extreme luminance differences are undesirable because it tires the eyes to adjust to them.
>
> .... uniformity permits flexibility of functions and equipment and assures more uniform luminances.

Proposed paragraph (c) would require that lighting provided aboard ship does not shine into the eyes of personnel in key positions of cargo control, such as crane and winch operators. Certainly it is extremely important to allow a clear and unencumbered view to those that are in control of the cargo transit. With the same principle in mind, it would also be required that stationary lights (those not mounted on vehicles) on Ro-Ro vessels not shine into the eyes of drivers. In addition, the proposed requirements for portable lights and entry into dark areas closely parallel the provisions in the existing standard.

Proposed §1918.93, Hazardous atmospheres and substances, is designed to provide protection from atmospheric hazards which are not specifically addressed in other proposed sections. In as much as these hazards are virtually identical to those found in marine terminals, the language of this section largely tracks the requirements found in §1917.23. Since the promulgation of the Marine Terminal standard, OSHA has promulgated a Permit-Required Confined Spaces standard for General Industry (58 FR 4462, Jan. 14, 1993). Since both the Marine Terminal and Longshoring standards currently addressed hazards associated with confined spaces, OSHA did not intend the General Industry standard to apply to these workplaces. However, OSHA also had planned, in its ongoing development of this longshore proposal, to conform the relevant longshore requirements to the more explicit and protective marine terminal requirements. Furthermore, this approach is consistent with the vertical nature of these maritime standards.

The use of the phrase "the employer is aware" that a hazardous condition exists means that the employer is or should be aware of the hazardous condition. This section establishes requirements for the determination of the hazard, the testing during ventilation, and the procedures for entry into hazardous atmospheres. In addition, the hazards associated with emergency entry, inadvertent entry and asbestos spills are also addressed.

Proposed §1918.94 provides requirements for ventilation and atmospheric workplace conditions. Proposed paragraph (a) specifically addresses the hazards associated with carbon monoxide (CO) aboard ship. Longshoring work frequently involves the use of internal combustion-powered equipment to facilitate the stowage and removal of cargo. This equipment would include fork lift trucks, bulk cargo movers and the cargo itself (vehicles on Ro-Ro ships). Occupational fatalities and disabling illnesses still appear on the waterfront (Exs. 1–76, 1–77, and 1–81) due to high levels of (CO) accumulating from these sources in cargo spaces.

Currently OSHA's limit for (CO) in General Industry, Construction, and Shipyards is 50 ppm as an 8-hour TWA. The limits in Marine Terminals and Longshoring are a 50 ppm and, in confined spaces, a 100 ppm ceiling. The ACGIH–1986 has a TLV®-TWA of 50 ppm and a TLV®-STEL of 400 ppm for (CO) (Ex. 3–8). NIOSH (Ex. 3–1) recommends an 8-hour TWA limit of 35 ppm and a 200 ppm ceiling. For both Longshoring and Marine Terminals, OSHA is proposing to lower the PELs for CO to 35 ppm (8-hour TWA) and is proposing a 200 ppm (ceiling, measured over 5 minutes) in outdoor, non-enclosed spaces. OSHA is proposing to retain the 100 ppm ceiling for CO in enclosed spaces in Marine Terminals and Longshoring. NIOSH concurs (Ex.

3–2) that the proposed limits are appropriate.

Carbon monoxide is a flammable, colorless, practically odorless gas. It is used as a reducing agent in metallurgical operations, in the manufacture of metal carbonyls and zinc-based white pigments, and as a chemical intermediate. Most occupational exposures to this ubiquitous substance are the result of the incomplete combustion of organic material (HSDB 1990; Ex. 3–18).

Carbon monoxide has caused a large number of industrial fatalities as a result of its tendency to combine readily with hemoglobin to form carboxyhemoglobin (COHb). The Immediately Dangerous to Life and Health (IDLH) level for carbon monoxide is 1500 ppm (Ex. 3–3). At levels above this, workers quickly lose consciousness; if exposure is not terminated immediately, death by asphyxiation follows quickly.

In experimental animals, asphyxiation occurs when the air-borne concentration of CO exceeds 3 percent (30,000 ppm) (HSDB 1990). CO also causes reproductive and developmental effects in animals. The LD_{50} in rats is 1807 ppm for 4 hours (Ex. 3–4).

Excessive accumulations of COHb cause hypoxic stress in healthy individuals as a result of the reduced oxygen carrying capacity of the blood. In patients with cardiovascular disease, such stress can further impair cardiovascular function. A number of studies show that 8-hour TWA exposures to 50 ppm carbon monoxide generally results in COHb levels of 8 to 10 percent. Such levels are not generally associated with overt signs or symptoms of health impairment in healthy individuals with strong cardiovascular systems who are working under nonstressful conditions. However, the ACGIH believes that a TLV®-TWA of 25 ppm, which results in COHb levels of 4 percent or less, may be necessary to protect workers with cardiovascular disease, because this condition places workers at higher risk of serious cardiovascular injury (Ex. 3–8, p. 1106). The NIOSH REL of 35 ppm TWA is also aimed at protecting workers with chronic heart disease (CHD); NIOSH believes that such workers should not be allowed to have carboxyhemoglobin levels that approach 5 percent. In the part 1910 air contaminants rulemaking, several commenters questioned the need to lower the 8-hour TWA and to add a STEL.In response to these commenters, OSHA quoted the ACGIH (Id.):

> Each molecule of CO combining with hemoglobin reduces the oxygen carrying capacity of the blood and exerts a finite stress on man. Thus, it may be reasoned that there is no dose of CO that is not without an effect on the body. Whether that effect is physiologic or harmful *depends upon the dose of CO and the state of health of the exposed individual.* The body compensates for this hypoxic stress by increasing cardiac output and blood flow to specific organs, such as the brain or the heart. When this ability to compensate is overpowered or is limited by disease, tissue injury results [emphasis added].
>
> Exposure to CO sufficient to produce COHb saturations in the 3-5% range impairs cardiovascular function in patients with cardiovascular disease and in normal subjects. * * * The primary effect of exposure to low concentrations of CO on workmen results from the hypoxic stress secondary to the reduction in the oxygen-carrying capacity of blood. * * * Workmen with significant disease, both detected and undetected, may not be able to compensate adequately and are at risk of serious injury. For such workers, a TLV of 25 ppm * * * might be necessary. Even such a concentration might be detrimental to the health of some workers who might have far advanced cardiovascular disease. * * * It would appear to the Committee that the time-weighted TLV of 50 ppm for carbon monoxide might also be too high under conditions of heavy labor, high temperatures, or at high elevations (Ex. 3–8).

Thus, the ACGIH also regards a lower limit for CO as necessary to protect workers with cardiovascular or pulmonary disease or those working under stressful conditions.

OSHA believes that it is clearly necessary to set a CO level that protects workers who have CHD because (1) a large percentage of employees have it, (2) it is often not diagnosed or diagnosable, and (3) it is frequently fatal. The 35 ppm 8-hour TWA is designed to protect employees with asymptomatic CHD. The term CHD is generally used to refer to the process of atherosclerosis of the coronary arteries, which leads to disturbances in the myocardial blood supply.

The general worker population in the United States is composed of a very significant number of persons with CHD. Since the identification of such persons in the absence of overt clinical symptoms is virtually impossible, it is necessary to assume that the average worker has asymptomatic CHD, especially when his/her first clinical symptom may be sudden death (Ex. 3–1). Several studies demonstrate the significant risk associated with CO exposure, particularly with respect to coronary heart disease. A study of firefighters in Los Angeles (Ex. 3–10) suggests that CO exposure during firefighting may be responsible for the high incidence of heart disease in firefighters. In some fires, peak exposures were occasionally as high as 3000 ppm CO, with 40 percent of peak values in the 100-to 500-ppm CO range. However, in some fires, the peak CO exposure was below 100 ppm. Although these peak exposures in firefighters were high, firefighters are likely to be exposed overall for fewer hours than the workers of concern in this rulemaking.

A prevalence study was recently performed on angina pectoris, ECG changes, and blood pressure that involved 1,000 workers from 20 foundries (Ex. 3–11). A clear dose-response was found with regard to the prevalence of angina (as obtained by history on a World Health Organization-recommended questionnaire) and CO exposure in workers (both smokers and nonsmokers).

NIOSH conducted a prospective cohort mortality study among 1,558 white male motor vehicle examiners who were employed in New Jersey for a minimum of 6 months between 1944 and 1973 (Ex. 3–12). Industrial hygiene surveys indicated that the examiners were exposed to carbon monoxide at a time-weighted-average (TWA) of 10 to 24 ppm. Using a modified life table technique, the expected deaths were compared to the expected deaths through August 1973. The overall deficit of mortality observed (SMR180) in this occupational cohort during the first 10-year period was to be expected as a result of the widely accepted "healthy worker effect." However, the component SMR for cardiovascular disease deaths (134) was unexpected, since the "healthy worker effect" had been most significantly associated with decreased cardiovascular disease mortality (Ex. 3–13). This evidence suggests that slightly elevated COHb may contribute to excess cardiovascular disease rates in a healthy population that is of average fitness (since the work is not physically hard).

A recent study (Ex. 3–14) reviewed the epidemiological evidence for an association between carbon monoxide and heart disease and concluded that carbon monoxide exerts acute and possibly reversible short-term effects that can increase the risk of cardiovascular disease.

In another recent study, male volunteers aged 35 to 75 with stable exertional angina pectoris and positive exercise treadmill tests were exposed to CO concentrations designed to cause 2.2 to 4.4 percent COHb levels after exercise. The subjects performed a symptom-limited exercise test on a treadmill, followed by exposure for 1 hour to CO, and then performed a second treadmill test. All subjects who completed the study (N=63) showed significant decreases in time to onset of ischemic ST-segment changes; in the 2 percent COHb group, this change

equalled 5.1 percent, and in the 4 percent COHb group it averaged a 12.1 percent decrease (Allred, Bleecher, Chaitman, Dahms, Gottlieb, Hackney et al. 1989, in Res. Rep. Hlth. Effect. Inst. 25:79).

As pointed out above, cardiovascular disease (detected or undetected) and pulmonary impairment are widespread in the general population in this country, in workers as well as other subpopulations. In addition, OSHA is particularly concerned about the adverse effects of CO because workers regularly encounter complex and stressful situations at work, including heat stress, jobs demanding heavy exertion, and tasks requiring both judgment and motor coordination. OSHA standards are intended to protect workers of average and below-average fitness and those who engage only intermittently in heavy physical labor and who do not therefore receive the benefit of physical conditioning.

OSHA thus has determined that, in Longshoring and Marine Terminals, the proposed 8-hour TWA of 35 ppm for carbon monoxide is needed to reduce the significantly increased risk of cardiovascular disease that is associated with overexposure to CO. The Agency also believes that a ceiling of 200 ppm in outdoors, non-enclosed spaces is necessary to ensure that peak CO exposures are kept below the 1500 ppm IDLH level by a reasonable safety factor. The ceiling limit will also assist in keeping COHb levels below 5 percent; the ceiling will be measured over 5 minutes to permit the use of simpler monitoring techniques.

Based on this evidence, OSHA is proposing an 8-hour TWA of 35 ppm and a ceiling of 200 ppm in outdoor, non-enclosed spaces as the PELs for carbon monoxide in the longshoring and marine terminal industries. In these industries, however, most employees regularly enter and work in a compartment, hold, or other enclosed space, in which CO levels can increase rapidly if uncontrolled. CO, therefore, presents an especially great danger of death from IDLH levels of CO. Consequently, OSHA is retaining the 100 ppm ceiling for CO in such spaces, as well as the provision requiring monitoring of these spaces. The Agency would continue to require that the employer monitor the ambient air within any cargo space where internal combustion engines discharge their exhaust. Therefore, when concentrations of CO in these enclosed spaces reach 100 ppm, work shall be suspended and the workers removed from the spaces. Work shall not resume until concentrations of CO, as determined by actual monitoring, have been reduced to within the allowable limits.

The Agency believes that these limits will ensure that the COHb levels of exposed workers (especially of non-smokers) in these sectors are maintained at or below 5 percent, which will protect those workers at greater risk because of cardiovascular or pulmonary impairment. In addition, these revised limits will protect healthy workers in the affected sectors who must work in environments involving intermittent exertion, heat stress, or other strenuous conditions. OSHA believes that these limits are necessary to substantially reduce the significant occupational risk associated with both chronic and peak exposures to carbon monoxide in the workplace. The hypoxic stress associated with exposure to carbon monoxide clearly constitutes a material impairment of health and functional capacity. For a more complete discussion of these health effects see 57 FR 26371.

If natural or vessel supplied ventilation is not sufficient to maintain levels within the allowable limits, the employer must utilize supplemental methods until such levels are reached (generally accomplished with portable blowers). It should be noted that the proposed requirement deletes the language "before work is resumed." This is to make the requirement reflect more clearly the actual industry practices being employed to control exposure to CO through the use of engineering controls. The longshoring work itself generates CO through the use of the loading equipment. In reality, then, it is not the circumstance that 100 ppm is routinely reached, the hold is cleared of workers, supplemental blowers are used to clear the air and then the workers return to work. Rather, when a sustained build-up of CO is detected, even at much lower levels, the supplemental blowers or other additional means are employed to maintain the exposures to within the allowable limits.

Portable ventilating equipment must be guarded to prevent employee injury, and they must be effectively grounded by a grounding conductor run with or enclosing the circuit conductors. In situations where portable ventilating equipment is run by vessel supplied power, the grounding conductor must be bonded to the structure of the vessel. Given the shipboard environment, careful attention must be paid to the electric cords of portable equipment, making certain they are not worn or otherwise unserviceable.

OSHA is proposing to retain the requirement for recording tests of the atmosphere. The stevedoring community is successfully using such testing logs as a frame of reference in assessing atmospheric conditions from one point in time to the next.

In proposed paragraph (b), OSHA addresses the longshoring hazards associated with handling grain that has been treated with fumigants. Grain is subject to infestation by insects and rodents during storage and shipping. Fumigants used to control infestation can be liquid or solid compounds that release poisonous gases and can be applied in the form of sprays, fogs or gases or by direct contact (Ex. 1–104).

> * * * these gases are harmful, possibly fatal, to humans as long as they remain potent. Therefore, they constitute a safety hazard from the time of application throughout the duration of their potency—which may last for several days. (Id. p.36).

Here, OSHA would require that the employer determine whether or not grain to be loaded or discharged aboard a vessel had been fumigated. Such a determination shall be based on direct communication with knowledgeable persons from both the grain elevator and the vessel.

When a cargo has been fumigated, an employer shall designate a person (see §1918.2(c)), who is thoroughly familiar with the characteristics of the fumigant being used and how to properly assess contaminant levels; fully aware of the manufacturer of the fumigant's use recommendations and warnings; and knowledgeable about the proper personal protective equipment which must be worn to safely guard against the possible effects of the fumigant. The designated person must test the vessel's compartments after loading begins, but before longshore employees (generally trimmers) enter. Subsequent tests must be made to ensure that fumigant concentrations to exposed personnel never attain levels that are beyond the allowable limits. Records of those tests are retained by the employer for a period of 30 days. Whenever the concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturer or by subpart Z of 29 CFR part 1910, whichever is lower, all employees shall be removed from such compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is within allowable limits.

Consistent with §1917.25 of the Marine Terminal standard, during emergencies or while tests are being undertaken in compartments that have

hazardous or unknown concentrations of fumigant, the designated person entering the compartment must be properly outfitted with personal protective equipment, (See criteria at proposed §1918.94(b)(3)(v)), and must be observed while conducting such tests by two standby employees, who are themselves properly outfitted. The personal protective equipment used by the designated person and the observers, will be required to be readily available wherever fumigated grains are handled.

In situations where it is necessary to carry out insecticide or pesticide treatment of a localized nature, such as in rodent control, paragraph (b)(4) would require that employees conducting the treatment and those that may be exposed to the chemical(s) applied, be equipped with personal protective equipment that meets the specifications set out by the manufacturer of the chemical(s) being used.

In proposing these rules covering fumigated grain cargoes, the Agency has relied upon the existing rule for longshore employment (Ex. 1–39) but has also utilized the Agency's experience in promulgating the general industry Permit-required Confined Space standard (29 CFR 1910.146, 58 FR 4549), together with accident data (Ex. 1–104) relating to fumigated grain cargoes aboard ship. Finally, these rules are further supported by similar provisions found in the Pacific Coast Marine Safety Code (Ex. 1–145) and the U.S. Coast Guard's "Interim Regulations for Shipboard Fumigation," 46 CFR–147A (Ex. 1–105).

In proposed paragraph (c), the Agency proposes requirements for handling cargoes of fumigated tobacco. Tobacco cargoes, both ported and exported, are shipped most typically in bales, in hogsheads, and in intermodal containers. OSHA's proposed Longshoring requirements apply when cargoes are break-bulk, i.e., piece lots of bales or in hogsheads. When such cargoes are containerized, OSHA addresses employee exposure in the Marine Terminal standard (29 CFR 1917.25(g)).

In the case of break-bulk fumigated tobacco cargoes, the employer would be required to determine (by written notification) if the cargo has in fact been fumigated. If so, the employer would be further required to obtain a written warranty from the fumigator(s) that the cargo has been sufficiently aerated (concentration of fumigant is within allowable limits.) OSHA notes that this practice is currently in place at all longshore operations in the U.S. handling tobacco. In the case of containerized shipments of fumigated tobacco, OSHA is proposing new language that can be found in the proposed changes to the Marine Terminal regulations, §1917.25(g), which is part of this proposal and which is discussed in Section VI of this rulemaking.

Proposed paragraphs (d) and (e) remain virtually identical to the existing provisions. Paragraph (d) involves a work practice to discover hazardous exposures to fumigants of any cargo other than grain and tobacco while paragraph (e) involves the use of personal protective equipment to protect against heavy concentrations of dust.

Proposed paragraph (f) addresses operations aboard vessels engaged in the menhaden trade. Menhaden is a term that refers to several species of trash fish. Menhaden is used to produce, among other products, fertilizer, pet food and fish oil. (See 46 FR 4213.) As cargo to specialized menhaden marine terminals, menhaden presents a health hazard to longshore workers when it decomposes, generating hydrogen sulfide (H_2S). As recently as 1987, a hydrogen sulfide incident aboard a menhaden vessel led to serious injury and a fatality (Ex. 1–80). OSHA's current limit for hydrogen sulfide in Marine Terminals is 20 ppm as an 8-hour TWA; the current Longshore standard is silent with regard to both H_22S and menhaden. The 1986 ACGIH TLV®s for hydrogen sulfide are 10 ppm as an 8-hour TWA and 15 ppm as a 15 minute STEL (Ex. 3–8); NIOSH has a 10-ppm, 10-minute REL for this substance (Ex. 3–3). OSHA is proposing an 8-hour TWA of 10 ppm in Longshoring and Marine Terminals with a STEL of 15 ppm. Promulgation of these PELs will make OSHA's limits for hydrogen sulfide consistent with the best available evidence on the hazards of H_2S exposure.

Hydrogen sulfide is a colorless, flammable gas with the odor of rotten eggs. It is widely used as a chemical intermediate, an analytical reagent, and in the manufacture of "heavy water" (H_2O_2) in the utilities sector. In agriculture, it is used as a disinfectant (HSDB 1985). It is also generated by the fermentation of animal manure. Many farm workers have been exposed to this substance while working in the vicinity of liquid manure storage pits and have been asphyxiated as a consequence (Ex. 4–1). Hydrogen sulfide also is encountered in natural oil and gas deposits and in sewers, caissons, tunnels, and other construction sites (Grant 1986, p. 495). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In longshoring, the hazard is brought about by the generation of hydrogen sulfide gas, caused by the decomposition of the menhaden (and similar species) catch.

Hydrogen sulfide's effects on experimental animals are similar to those seen in exposed workers: conjunctivitis, pulmonary irritation, acute poisoning, and death by chemical asphyxiation (Ex. 4–2). The LD_{50} in mice is 673 ppm for 1 hour (Ex. 4–3). A number of experiments have demonstrated that exposure to hydrogen sulfide concentrations of 50 to 100 ppm for several hours (or sometimes longer) causes damage to the corneal epithelium of dogs, cats, rabbits, and guinea pigs; animals are believed to be somewhat less sensitive than humans to hydrogen sulfide's ocular effects but may be more sensitive to its pulmonary effects (Grant 1986, p. 1496).

When inhaled at concentrations exceeding 500 ppm, exposure to hydrogen sulfide has caused respiratory paralysis and death. Acutely poisoned individuals who recover may experience headaches, fatigue, dizziness, and nystagmus; eventually, however, recovery is usually complete (Ex. 4–4). The 1986 ACGIH *Documentation* (Ex. 1-3, p. 1318) cites several reports (Ex. 4–6) of the occurrence of adverse ocular effects, including conjunctivitis, caused by exposure to 20 ppm or less of hydrogen sulfide. A study by Poda and Aiken (Ex. 4–7) reports that the adoption of a voluntary limit of 10 ppm in two heavy-water plants eliminated exposure problems at those facilities. An early study by Flury and Zernik (1931f) reports that the conjunctivitis caused by the exposure of volunteers to 10 to 15 ppm of hydrogen sulfide for six hours endured for several days; however, this substance is not known to have caused irreversible eye damage.The author of the best-known general source on the toxicology of the eye (Grant 1986) states that "where the concentration [of hydrogen sulfide] is regularly kept below 10 ppm in air, it is rare to have any irritation of the eyes" (p. 1496). OSHA believes that the proposed STEL will ensure that concentrations are maintained close to the 8-hour TWA and that excursions above irritant levels are thus minimized.

Based on this evidence, OSHA believes that the current 10-ppm 8-hour TWA limit alone does not adequately protect workers in Longshoring and Marine Terminals against the adverse ocular effects associated with exposure

to concentrations of hydrogen sulfide above 10 ppm. OSHA believes that the eye irritation and conjunctivitis associated with such exposures represent a significant risk of material health impairment to these workers because they may experience pain and other ocular effects and be forced to seek medical treatment after such exposures. OSHA is accordingly proposing an 8-hour TWA limit of 10 ppm for hydrogen sulfide with a short-term limit of 15 ppm in these parts 1917 and 1918. Based on available information, the Agency has determined that these limits are necessary to provide protection from the significant risk of exposure-related ocular effects, including conjunctivitis, corneal edema, and distortion of vision, associated with occupational exposure to hydrogen sulfide.

Since the hazard this paragraph seeks to avoid is brought about by the generation of hydrogen sulfide gas, caused by the decomposition of the menhaden (and similar species) catch, the requirements are not applicable to operations aboard vessels with operable refrigerated compartments used to hold the catch. Paragraph (f) requires that tests be performed before and during discharge, by designated personnel who are trained and competent in their understanding of the potential hazards involved within the catch hold(s). The test would include assessments of hydrogen sulfide and oxygen content of the atmosphere(s) within the hold(s). Employers would be prohibited from sending employees into the hold(s) unless the hydrogen sulfide level was kept below 10 parts per million on a time weighted average with a short term exposure limit of 15 ppm measured over a 15 minute sampling period. Oxygen levels must be maintained to at least 19.5 percent.

In arriving at these proposed requirements, OSHA utilizes information that supported similar requirements for the shoreside aspect of menhaden operations in the Agency's rules for Marine Terminals (§1917.73; See discussion at 46 FR 4213). Also, in the development of the proposed requirements, the National Fish Meal & Oil Association was clearly supportive of the proposed regulatory posture. In communications between that group and the Department of Labor, and in memoranda to the association's membership (Ex. 1–56), it is clear that industry practice is quite consistent with OSHA's proposal.

Proposed §1918.95 contains requirements for sanitary considerations at all longshoring operations. OSHA believes that the hazards associated with poor sanitation and sanitary practices are well established and need not be elaborated here. The proposed provisions are fully consistent with the current regulations for shoreside cargo handling (§1917.127), providing the uniformity that is necessary between the two segments of marine cargo handling. OSHA is proposing in both §§1917.127 and 1918.95 to include tables which specify the number of toilet facilities according to the number of employees at the worksite. This table has been taken from the sanitation section in OSHA's Construction Safety Regulations, 29 CFR 1926.51(c). OSHA requests the public to comment on the inclusion of this table in this proposal.

Summarizing the section, OSHA would require that employers provide their workers with washing and toilet facilities that are equipped with hot and cold (or tepid) running water; soap; clean hand towels (or warm air blowers); clean and functional toilets (that offer separate compartments with a latched door), and clean drinking water (with no common cups). The consumption of food or drink would continue to be prohibited wherever hazardous materials are stowed or being handled (see definition at §1918.2(g)). Additionally, cargo handling operations are to be separated (by barriers) from the vessel's uncovered refuse and, in the unlikely event of a sanitary line overboard discharge, from it as well. Since longshoring work is performed adjacent to a marine terminal, if the marine terminal's sanitation facilities are available for longshore employees' use, this would constitute compliance with §1918.95. (Section 1917.127, which covers sanitation at marine terminals, is virtually identical to proposed §1918.95.)

Because longshoring operations generally take place in a location with restricted space, i.e., aboard a ship, other non-associated but often necessary work (such as ship's maintenance and repair) must be conducted carefully, with due deference to the cargo handling being performed. In such circumstances, employees may be exposed to hazards associated with excessive noise leading to impaired communications, excessive light or heat from hot work, overspray from abrasive blasting or spray painting, or non-ionizing radiation. In OSHA's current rules for Longshoring (§1918.95), the Agency has prescribed requirements to account for the hazards that can be anticipated when maintenance and repair work are concurrently undertaken with cargo handling. Those same rules are proposed in §1918.95 (with very minor change) to be included in the revision of this part. Summarizing them, longshoring operations would be prohibited when noise produced by such concurrent work interferes with the communication of warnings or instructions; when falling objects could fall on cargo handlers from such work being conducted overhead; when welding slag, burning sparks or welding rod flash could injure cargo handlers; and when abrasive blasting or spray painting is being performed in the vicinity of cargo operations.

Additionally, OSHA is proposing to prohibit cargo handling operations where the employees are exposed to electromagnetic (non-ionizing) radiation that is emitted from the radio and radar equipment on the vessel. This could be especially dangerous when employees are working on the tops of containers while work is being done to the radar or radio equipment. OSHA is also aware of the dangers associated with non-ionizing radiation emitted from radio and television towers that are close to marine cargo handling facilities and has included the words "or from radio or television transmitting towers ashore" in this paragraph. OSHA issued a Hazard Information Bulletin on September 5, 1990, concerning a non-ionizing radiation incident caused by radio transmitting towers that were near a cargo handling facility. The radio frequency emissions were aimed in the direction of the cargo handling operation and the radiation caused longshore workers touching the crane wires and hooks to be burned. This situation was corrected by having the transmissions directed away from the cargo handling area, however other options were available such as, insulating the cargo hook, or providing proper personal protective equipment (Ex. 1–137).

Proposed §1918.97 sets out requirements for first aid and lifesaving, and parallels closely the same considerations set out by OSHA in its rules for the shoreside aspect of marine cargo handling (§1917.26). The hazards that this section is meant to address are those that would occur in the absence of first aid or rescue; that is, following an accident, this section is intended to mitigate the extent of injury to the employee.

In summarizing this proposed section, the employer would be required to direct all employees to report all injuries. A first aid kit would be required to be available at each vessel being worked, with at least one person holding a valid first aid certificate also available to administer first aid. OSHA does not stipulate who the certificate's issuing organization must be, but

remains consistent with its position taken while developing the Marine Terminals rule, wherein the agency stated at 46 FR 4193:

> No particular first aid course or approving agency is designated, so long as the certificate is issued by a responsible organization which requires successful completion of a course as evidence of qualification.

OSHA sets out no specific criteria for the contents of the required first aid kit(s). The Agency does, however, propose to have those needs individualized by a physician who, in consultation with the employer, can customize first aid kit contents to the hazards to be encountered. This is consistent with the approach taken by OSHA in its General Industry (§1910.151(b)) and its Construction standards (§1926.50(d)(1)). OSHA believes this approach to be not only more flexible, but more protective as well. It should be noted that OSHA is proposing to amend the Marine Terminal regulations to read the same as what is being proposed in this draft in regards to first aid kits and emergency stretchers. Requiring weekly checks of the contents of first aid kits is again consistent with OSHA's Safety and Health Regulations for Construction, §1926.50(d)(2).

Additionally, OSHA proposes to include more specific requirements addressing strength and design characteristics of emergency stretchers (Stokes baskets). These requirements reflect the terms of an agreement between the West Gulf Maritime Association and individual locals of the I.L.A. operating on the Gulf of Mexico, which OSHA considers to be appropriate for inclusion in the proposal. The requirement that the stretcher have at least four sets of "effective" patient restraints means that the restraints must be able to secure the patient to the stretcher even if the stretcher and patient is being lifted vertically. In an accident cited earlier in the preamble, (Ex. 1–90), where the employee was being carried vertically in the stretcher, the restraints were not effective and the patient fell off.

In proposed §1918.98, OSHA sets out requirements for the qualifications of machinery operators, i.e., crane or winch operators, industrial truck drivers, conveyor operators, etc., and provides proposed language to require the training of supervisory personnel, i.e., gang foremen, stevedore superintendents, etc., in accident prevention. The hazards addressed by this section arise from inexperienced, untrained or inappropriate operators of cargo handling machinery; and hazards created by improperly trained supervisory personnel. These hazards can readily lead to accidental injury or death.

Both topics originate in the shoreside rules (§1917.27), and focus on very important aspects indisputably tied to safe cargo operations. The proposed provisions would require that all employees (except supervised trainees) be familiar with signs, signals and operating instructions before operating cargo handling machinery or before giving signals to operators. OSHA would require that employee competency to perform such work be determined by the employer, using training and experience as criteria in making such a determination. The employer would be prohibited from allowing employees with a known incapacitating ailment, such as heart disease or epilepsy, or employees with defective uncorrected hearing or eyesight, from operating that equipment. Because supervisory training is considered to be essential to reducing the amount of accidents in any industrial setting, the Agency proposes to set requirements for the shipboard cargo handling workplace that will complement such requirements already in place for shoreside work. OSHA asks the public to comment on the effectiveness of the shoreside supervisory programs and benefits that have been derived. In proposing this requirement, the Agency notes that the great majority of supervisory persons already trained in accident prevention under the part 1917 rules, are those same individuals who would be covered by the training requirement under this proposal. The Agency requests interested persons to submit comment on the proportion of supervisory employees for whom such training would actually be required. The same built-in transition periods established for training within the Marine Terminals rule (two years after the promulgation of the final rule and after that date 90 days after supervisory assignment), are proposed also for shipboard application. The criteria for course content is performance-based, allowing for instruction to be tailored to the particular operation(s). The recommended topics included as a footnote are considered to be rudimentary to most shipboard cargo handling operations.

It should be noted that current §1918.98 entitled "Grain fitting" is being deleted by this proposal. OSHA believes that this type of longshoring operation is obsolete and no longer exists. OSHA, however, recognizes that interested parties may have differing views regarding this deletion and invite comment on this point.

Subpart J—Personal Protective Equipment

All proposed sections of this subpart are based in the requirements for personal protective equipment found in the shoreside requirements for marine cargo handling (§§1917.91, 1917.92, 1917.92, 1917.93, 1917.94, and 1917.95). The hazards addressed by this section are those that personal protective equipment can eliminate or ameliorate by its proper use. For example, eye protection can prevent the loss of an eye; foot protection can prevent a broken foot; respirators can prevent toxic poisoning; and so on. As was the case in that rulemaking, (48 FR 30903), OSHA again sets out the principle that whether the PPE costs must be borne by employers depends largely on whether the employee has possession, responsibility and control over the specific piece of equipment. As an example, items such as protective gloves and foot wear are among pieces of gear that employees may bring home for personal use between work shifts, but the employees would be protected by the gear while at work. As such, the employer has to make available and assure that employees wear such equipment, but the standard does not require the employer to furnish it free of cost. Other items however, such as respirators, fall protection systems and special protective clothing, are pieces of gear that the employer is required to furnish and maintain.These are items that do not leave the workplace and are always under the control of the employer. Such items are those for which the employee is not obligated to bear any cost under the standards. OSHA understands that various arrangements exist for shared cost responsibilities and sole cost responsibilities at different parts of the Nation's waterfront, and leaves to the employers and employees the right to resolve such issues.

Proposed §1918.101, would require employees performing work which is hazardous to the eyes be provided with protection that meets the requirements (evidenced by marking or labeling) of the American National Standard for Occupational and Educational Eye and Face Protection (ANSI Z87.1–1989). Such eye protection would be required to be maintained in good condition, with cleaning and disinfection performed prior to issuance to another worker.

Proposed §1918.102 refers to §1918.1(b)(12), which adopts by

reference OSHA's General Industry standard for respiratory protection (§1910.134). The shipboard cargo handling environment is not unique in the selection or use of respiratory protection.

In proposed §1918.103, the Agency requires that employees whose heads are exposed to hazards associated with impact or electric shocks or burns be equipped with and be required to wear protective hats that meet the design requirements (evidenced by marking or labeling) of American National Standard Requirements for Protective Head Wear for Industrial Workers (ANSI Z89.1–1986). It also requires that cleaning and disinfection be performed when reissued to another worker.

Proposed §1918.104 addresses foot protection, requiring that employees exposed to impact or puncture hazards wear safety footwear meeting the design requirements of the American National Standard for Personal Protection—Protective Footwear. ANSI Z41–1991.

In this rulemaking, OSHA also proposes to update the American National Standards Institute (ANSI) references that are in the Marine Terminal standard so that they are the same as in the proposed Longshoring standard; §1917.91 (Eye protection); §1917.93 (Head protection); and §1917.94 (Foot protection).

In proposed §1918.105, other forms of protective measures for personnel are addressed. In summary, OSHA adopts a general approach to all additional protective clothing which requires that the employer provide and see to the proper use of all such measures. The Agency would require that all additional protective clothing be cleaned and disinfected before reissuance. It notes, however, that some types of equipment, such as disposable coveralls, require no cleaning or disinfection since they are single use items and discarded once used. Also, in some instances protective clothing may be issued, but because never worn or soiled, necessitates no further sanitary measures.

Personal flotation devices would be provided by the employer and required for all employees whose work exposes them to falls into the water in any of the following circumstances: when they are working in isolation (such as when adjusting by oneself mooring lines of a small craft abreast of a larger vessel); where physical constraints posed by limited working or walking area creates a fall hazard (such as when securing lines at the outboard edge of a barge having a narrow fore and aft walkway, or where the work area is obstructed by cargo or other obstacles in a manner that does not allow employees safe footing (such as when securing boom tie-downs at the outboard edge of a floating crane whose deck is congested with auxiliary hoisting equipment). OSHA is also proposing to add that personal flotation devices be worn by employees that are doing any work on the deck of a barge. There are numerous incidents of drowning which have occurred when employees have fallen overboard from a barge. Often these falls from a barge occur in the river system, where rapid currents increase the danger of drowning (Exs. 1–103, Case Nos. 13, 17, 18, 72, 77, 78, 79, 80, 81, 82, 101, 130, 136, 139, 143). OSHA feels that the danger of falling overboard while working on the deck of a barge (as opposed to working on the deck of a ship where the edge of the deck generally is guarded by a bulwark and railing) is sufficiently great as to add this proposed language. All personal flotation devices would be required to be a Coast Guard approved preserver or vest, and would be expected to be maintained in a safe and serviceable condition (no rips, rot or punctures and all closure devices in good order).

In all cases, it is clearly not enough just to have PPE available; the equipment needs to be used. The standard requires the employer to enforce the wearing of each type PPE whenever it is needed.

Appendices I, II, and III

Appendix I is a non-mandatory appendix that sets out the format of vessel cargo gear registers and certificates, under the terms of ILO Convention 152 (Ex. 1–33), discussed earlier in reference to §1918.11. Major changes from the original ILO Convention 32 (Ex. 1–34), include a new Form (Form No. 2 (U) which is a certificate issued by a "competent person" (most often a surveyor under the employ of a vessel classification society or inspection surety service) that contains the results of testing and examination of derricks used in union purchase.

In the case of foreign flagged ship's gear with which U.S.longshore workers load or discharge cargo, OSHA acts in the role of the "competent authority" in determining which "competent person(s)"/"responsible person(s)" are in fact qualified to witness tests/exams and execute certificates and registers. For this purpose, as a practical matter, OSHA recognizes persons and organizations acceptable to the Nation under whose laws the particular vessel is registered. In the event that a given flag has no laws that specifically apply (Ex. 1–91), OSHA would rely upon the vessel having a register and certificates endorsed by an entity approved for that purpose by the Commandant of the U.S. Coast Guard (see 46 CFR 91.37) or, alternately, an organization accredited by OSHA under part 1919 of this chapter (see proposed §1918.11). Another significant change from the original Convention, is the interval between tests of cargo handling gear. Such gear, under the terms of Convention 32, was required to be tested (for the assignment of a safe working load) initially before being taken into use. Because OSHA's current rule adopts the testing and examination requirements for vessel's cargo gear contained in Convention 32 (see §1918.12(a) of the current rules), the Agency can presently require that such gear is initially tested but, absent special circumstances, the gear is not required to be tested again. As a practical matter, most vessels (those operating under the rules of classification societies and international inspection services) have been operating under a quadrennial test schedule. With the advent of Convention 152, the international standard has shifted to "at least once in every five years," giving latitude to all organizations desiring to maintain the four year cycle. In proposing to stay in step with the international standard, OSHA offers this Appendix to assist employers and employees in correctly ascertaining the form and content of registers and certificates prescribed for in the newer Convention.

Appendix II, which is also non-mandatory, is offered as an aid to employers and employees in arriving at strength values of various pieces of gear used aboard ship in longshoring operations. Although the primary source for information on component gear strength is "the manufacturer's recommendations" or "the manufacturer's recommended ratings," the Agency appreciates that instances will arise wherein such recommendations or ratings will not be available (such as when some preslung cargoes are to be discharged from foreign ports). In such instances, proposed Appendix contains tables which can be used to evaluate hoisting equipment. Many of the tables appearing in this Appendix are taken directly from the latest American National Standard (ASME B30.9–1990 and addenda titled, Slings) (Ex. 1–148). The balance of the tables (those for allowable chain wear; shackle safe working loads; and wire rope clips) are derived from an amalgam of other OSHA rules for Longshoring, Construction (§1926.251), and General

Industry (§1910.184). These tables have been carefully assessed by OSHA as to their appropriateness for cargo handling applications, and the Agency believes that they will serve as fully protective criteria.

Appendix III, which is also non-mandatory, recognizes that, in some very limited situations, the use of fall protection may be infeasible. OSHA has listed two narrowly defined situations where it feels that fall protection may not be feasible. OSHA solicits comment from the public regarding the appropriateness of these two examples and whether there are additional examples of infeasibility. In addition, OSHA would consider this as an appropriate place to include any other advisory information regarding container top safety and solicits comments accordingly.

VI. Proposed Amendments and Corrections To Marine Terminal Standards

Several of the proposed amendments to the Longshoring standard (part 1918) address marine cargo handling hazards that should be reflected by a corresponding provision in the Marine Terminal standard (part 1917). For example, both parts currently do not explicitly prohibit employees from riding the hook or the load. By contrast, proposed §1918.81(l) prohibits this practice as does proposed §1917.45(l). The basis for this prohibition is discussed above. For the purposes of this discussion, when the basis for a proposed amendment is treated in the preamble above, it is not necessary to repeat it here. OSHA is requesting comment from the public on proposed amendments to Marine Terminals (part 1917) standards.

A new paragraph (d) has been added to §1917.11 that addresses the hazards associated with protruding nails that may be left in materials, such as dunnage, that have ben removed from the vessels and placed ashore. This paragraph has been taken from language that is in the current Longshoring regulations and is in the proposal at §1918.91(h)(2).

Currently in both parts, the allowable exposure limits for carbon monoxide is 50 ppm over an 8-hour time weighted average with a ceiling of 100 ppm. OSHA is proposing to change the 8-hour time weighted average to 35 ppm while leaving the ceiling limit at 100 ppm. This change is reflected in both proposed parts in §§1918.94 and 1917.24. (See above.)

In another example, currently in both §§1918.96 and 1917.26, the contents of a first-aid kit are specifically listed. In proposed §1918.96, however, the contents of a first-aid kit are to be determined by a physician. OSHA feels that the proposed part 1918 standard is more protective and proposes to amend §1917.26 to be consistent. OSHA would also incorporate into part 1917 the more extensive provisions that are found in proposed §1918.96 pertaining to the requirements for stokes basket stretchers.

In §1917.45(j)(2), OSHA is proposing to require that all cranes used to hoist personnel be equipped with and operate in the power up and power down mode and have the brake apply automatically when not hoisting or lowering. This is consistent with proposed §1918.66(c)(2).

OSHA is proposing a new requirement in §1917.50(i)(1), that prohibits exceeding the safe working load of cargo handing gear which is similar to language found in proposed §1918.61(b)(1). OSHA is also proposing a new requirement in §1917.50(i)(2), which requires the safe working load be marked on cargo handling gear with a safe working load greater than 5 short tons. This proposal is similar to proposed §1918.61(b)(2). See the discussion on these proposed requirements in the preamble for §1918.61.

In §1917.71(e), OSHA is proposing to allow only high-visibility vests (or equivalent protection) to be worn and remove the words "decals or reflectors." This would be in agreement with proposed §1918.86(n). As indicated above, the reflective area of a decal on a hard hat is obviously less than that of a vest. Also, the reflective value is lost during daylight hours or whenever the wearer takes off the hard hat. A number of serious accidents (Exs. 1–78, 1–89) have occurred in the past due to the nature of the work involved in such cargo operations. Additionally, OSHA is proposing to amend the language found in §1917.71(f)(5) to reflect the language found in proposed §1918.86(f), which requires that all brake air-lines be connected when pulling trailers equipped with air brakes.

OSHA is proposing to change §1917.73(a)(2) to read 10 ppm of hydrogen sulfide to agree with proposed §1918.94(f)(4). As recently as 1987, a hydrogen sulfide incident aboard a menhaden vessel led to serious injury and a fatality (Ex. 1–80). (See discussion of this for 1918.94(f) in Section V of this proposal).

OSHA proposes to carry over to §1917.71 the provision found in proposed §1918.86(g) that requires that flat bed and low boys trailers (mafi's) be marked with their cargo capacities and not be overloaded.

OSHA also seeks public comment on two proposed rules to be included in the Marine Terminal standard that do not have analogous rules in the proposed Longshoring standard. First, OSHA proposes to require that seat (lap) belt restraints be installed in the crane operators seat in high-speed container gantry cranes. High speed container gantry cranes are now capable of hoist speeds of 360 feet per minute (110 m/min) (without a load) and trolley speeds of 500 feet per minute (152 m/min). OSHA is concerned that the operator may be exposed to potentially injurious effects of sudden stops and starts (Ex. 1–133). OSHA believes that operator restraints will minimize the hazard and seeks comment from the public on this issue.

In the case of shipments of tobacco that have been containerized and then fumigated, OSHA is proposing, in §1917.25(g), that such containers be aerated (before being loaded on a ship) as follows: (1) If in unsealed bales or in hogsheads, aerated (with doors open) for 48 hours after fumigation has been completed, and, (2) if contained in a plastic enclosure, aerated (with doors open) for 72 hours. In proposing these requirements, OSHA relies on studies performed by the U.S. Department of Agriculture, Agriculture Research Service (Ex. 1–70). These studies concluded that intermodal containers so treated required 48 to 72 hours aeration to be free of hazardous fumigant levels. Past and recent communications (Ex. 1–95) with the Tobacco Association of the United States, also show that organization in accord with the 72-hour aeration required for tobacco shipped in polyethylene or similarly lined boxes carried in intermodal containers.

Upon the publication of the final Marine Terminal standard, several technical drafting amendments were treated in the preamble that were not consistently picked up in the subsequent regulatory text. OSHA is now proposing that these amendments be made. Several paragraphs have been corrected by removing the phrase, "The employer shall ensure...", from the beginning of the paragraph. See the discussion for this in 48 FR 30888–30889. The paragraphs that have been corrected in this manner are: §§1917.18(a); 1917.43(e)(1)(i); 1917.44(o)(3)(ii); 1917.44(o)(4); 1917.126(b); 1917.152(f)(1); 1917.152(f)(2) and 1917.152(f)(3)(iv). In addition, several paragraphs are being proposed to be revised by changing the phrase, "shall be available at the terminal" to the phrase, "shall be made

available for inspection". See the discussion for this in 48 FR 30889. The proposed paragraphs that reflect this change are: §§1917.24(d), 1917.25.(c), 1917.42(b)(4), 1917.42(c)(1), 1917.42(d)(1), 1917.42(h)(4), and 1917.42(h)(5).

OSHA is also aware of several typographical errors that are in the current 29 CFR part 1917 and intends to correct those in this rulemaking. For example, one of these corrections is in §1917.42. A square root sign has been added to the formula found in paragraph (d)(2), correcting an error that is in the current formula. OSHA seeks public comment on any other areas in the Marine Terminal standard that are affected because of the changes proposed to the Longshoring standard in this rulemaking.

VII. Other Issues

A. OSHA is raising the issue of the possible harmful effects of diesel exhaust on employees, especially those employees who work Ro/Ro vessels where exposure to such exhaust is probably the greatest. OSHA is aware that studies have been done concerning the effects of diesel exhaust by the Mine Safety and Health Administration (MSHA) in the mining industry. OSHA is not aware of any studies relating to the longshoring industry, (although the International Cargo Handling and Coordination Association (ICHCA) is in the process of drafting a paper entitled "Fumes in Ships", which will address this topic), and requests the public to submit pertinent information. OSHA requests information of the following: 1. What are the health effects of diesel exhaust? 2. What are the typical timeframes where employees are exposed to diesel exhaust? 3. Is mechanical ventilation sufficient to eliminate any harmful effects? 4. What other methods can be employed to reduce any harmful effects?

B. OSHA is aware of the problem of picking up the chassis and fifth wheel along with the container due to the failure of the container and chassis to separate during a loading operation. This is due to one or more of the chassis's twistlocks being in the locked position or one or more of the twist locks "hanging up" while in the unlocked position. Unfortunately, the driver of the fifth wheel is in the cab as it is being lifted and often sustains injuries when the cab and chassis fall back to the ground before the crane operator can lower everything back down. OSHA requests information on the following questions: 1) How frequently does this problem occur;? 2) OSHA believes this is primarily a problem on the West Coast. Is this true and why;? 3) OSHA is aware of several devices that have been developed to shut the crane down once the device detects the fifth wheel being raised off the ground. OSHA seeks information on the effectiveness of these devices in eliminating the problem, and the cost to purchase and install these devices; 4) Are there other ways to eliminate the problem, such as better "monitoring" of the chassis twistlocks under the hook through training and work practices, or requiring the driver to get out of the cab until the container is lifted clear of the chassis?

C. OSHA has long recognized the utility of comprehensive occupational safety and health programs, and adopted non-mandatory guidance for safety and health program management on January 26, 1989 (54 FR 3904). These guidelines were based on a distillation of safety and health management practices used by employers that have implemented successful comprehensive programs. The major elements OSHA identified in the guidelines for effective occupational safety and health programs are: 1) management commitment and employee involvement; 2) worksite analysis to anticipate and identify potential hazards; 3) hazard prevention and control; and 4) safety and health training.

Successfully implemented programs generally result in facilities that have a lower incidence of occupationally related illnesses and injuries. In particular, OSHA has found that companies which have implemented comprehensive safety and health programs and are participating in its Voluntary Protection Programs (VPP) have lost-workday rates that range from one-fifth to one-third the rates experienced by average worksites within their industrial classification. In addition, participating sites have reported improved employee morale, product quality, and productivity as some of the secondary benefits of their safety and health management activities.

Occupational safety and health standards and guidelines, whether mandatory or developed as voluntary consensus activities, traditionally have tended to focus on specific problems or hazards rather than taking a broad, program-oriented approach.In recent years, however, OSHA has promulgated a number of generic standards that have program requirements. There is now increasing evidence that a requirement for all employers to address occupational safety and health programmatically can provide an effective supplement to specific hazard-related requirements, and provides an added degree of safety and health for employees.

Properly designed and implemented comprehensive programs focus the attention of both employers and employees on safety and health in the workplace. With increased awareness of safety and health concerns, and the commitment to alleviate the hazards by implementing appropriate controls, workplace-related safety and health injuries and illnesses are expected to decrease.

While the specific elements of existing comprehensive occupational safety and health (COSH) programs may vary, the general concept is the same. COSH programs are designed to coordinate and integrate all facets of occupational safety and health into the management practices for the facility. Rather than addressing problems on a one-by-one basis, implementation of a COSH program requires company management to systematically review all hazards in the facility, and develop a plan to prevent or control them. All employees of the facility must be involved in the development and implementation of the plan, and there must be a company-wide commitment to controlling or eliminating occupational safety and health problems. The program is implemented on a continuing basis, that is, there are provisions for ensuring that the situation in the facility is monitored on a regular basis to ensure that the program is working. Program evaluation activities to assess effectiveness are also part of the concept.

The logic of this approach is simple—prevent adverse effects from occurring by identifying hazards, and implementing a plan to eliminate or minimize them. By doing this systematically, resources are not duplicated or wasted, and a coordinated, integrated strategy can be implemented. Effective functioning of such a program depends largely on the commitment and involvement of all members of the organization, beginning with the highest level of management.

OSHA believes the COSH program approach can be applied in any establishment, and in any size facility. The complexity of the specific program in a particular establishment will depend on the nature of the business, the number of employees, and the types of hazards present. While the basic components of a COSH program would be the same in, for example, a marine terminal and an automobile manufacturing plant shop, the methods used to implement them would vary based on the different needs of the facilities. Every type and size of

establishment should nevertheless have a systematic approach to addressing occupational safety and health concerns. All workplaces, from office situations to health care facilities, restaurants to stevedoring operations, can benefit from the development and implementation of an appropriate COSH program.

Request for Comments and Information

OSHA is raising this issue to solicit public input on COSH programs. The Agency is particularly interested in learning about the experiences of employers who have already implemented such programs, and those of employees who work in facilities where these programs have been implemented. The purpose of collecting these comments is to determine whether OSHA should adopt mandatory requirements for comprehensive occupational safety and health programs; what the components of such programs should be; what problems employers have had in implementing such programs, and what can be done to alleviate those problems; the benefits of implementing COSH programs; methods that can be used to evaluate the effectiveness of the programs; the costs and economic feasibility of such programs; the impacts on small businesses; and suggestions regarding existing OSHA rules that could be consolidated or modified as a result of promulgating requirements for mandatory COSH programs.

Format of Questions and Responses

The specific questions asked are designed to elicit the information OSHA believes would be helpful in determining appropriate elements for COSH programs in longshoring work. The questions are in some cases directed towards specific audiences, such as employers who have implemented programs. Other questions have more general applicability. Interested persons may also submit other information or opinions which they believe are relevant.

OSHA asks that commenters respond to the specific questions enumerated, and to number responses in accordance with the number of the question to which the response is addressed. In addition, it would also be helpful for OSHA to receive copies of written materials to supplement these responses, such as copies of written programs, examples of forms used, and sample evaluations.

1) OSHA would like to receive information and data regarding the respondents to this notice in order to properly profile the responses. If you are submitting comments in response to this notice on behalf of an employer or group of employers that have implemented a COSH program, or employee or group of employees working in such a facility, please provide the following specific information. If you are not one of either of these groups, please indicate your role or relation to COSH programs.

a) The size of the facility by number of employees;

b) When the program was implemented;

c) Why the program was implemented (e.g., voluntary decision, state requirements, insurance carrier's requirements, etc.);

d) What the major components of the existing program are;

e) What the initial and annual costs of implementing each of these components have been, and how you derived these costs;

f) What resources have been required to operate the programs; and,

g) What cost savings, illness or injury reductions, or other benefits (e.g., changes in productivity, absenteeism, turnover, insurance, etc.) have accrued due to implementation of the program, and how you derived these benefits.Components of a COSH Program

As described above, OSHA has published and distributed guidelines for safety and health management programs which include four major elements. OSHA would like comments on whether these elements are appropriate; whether more specific information should be provided regarding what should be addressed under each of these elements; and what other elements may be appropriate for inclusion in COSH programs.

Management commitment and employee involvement. The first element included in the guidelines is management commitment and employee involvement, or management leadership. Management commitment is expected to be stated in a worksite policy which outlines the organization's priority on safety and health, and indicates who has primary responsibility for implementation of various aspects of the policy. Other facets of this element include establishing and communicating clear goals and objectives for the program; providing visible management involvement; ensuring employee involvement; providing adequate authority and resources for those responsible; holding those responsible accountable; ensuring contract workers are protected; and reviewing and evaluating the program at least annually.

2) Please comment on the inclusion of management commitment and employee involvement as a major element of a COSH program.It has been OSHA's experience and that there is no situation where these considerations are inappropriate.

3) Is this a common program component? How is it implemented? Is the program integrated into the overall management of the workplace? How well does this work?

4) Who is responsible for managing the program? What skills and knowledge must this person have to be the program manager? What is the role of the President or Chief Executive Officer? The facility manager? The supervisor? The employee? Do performance evaluations include an assessment of performance with regard to safety and health? Are managers and employees held accountable for safety and health performance? How?

5) Are written policy statements prepared and distributed? Please provide examples. Are there situations where a program can operate effectively without having a written plan?

6) What was the primary motivation for implementing the program (e.g., voluntary, state requirements)? Have insurance companies encouraged adoption of COSH programs? How was this done?

7) How is employee involvement ensured in existing programs? Are labor-management committees used? If so, please provide details about how the committees are formed and are operating. What other suggestions do you have for ensuring employee involvement?

8) How are existing programs evaluated to determine whether or not they are effective? Are worksite program audits conducted? What do the audits include? How often are workplace conditions reevaluated after the initial assessment? Please provide copies of any evaluation procedures that may be available. What are the criteria for determining that the program is or is not effective? What type of evidence is required to demonstrate that each program element has been implemented? Is the program integrated into the overall management of the workplace?

9) Have any problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Worksite analysis. The second element in the guidelines is worksite analysis. Employers must identify all worksite hazards by conducting an initial and subsequent periodic comprehensive baseline worksite surveys for safety and health. The surveys would vary by the type of workplace, and the nature of the hazards present, but would include an assessment of both safety and health hazards. Examples of situations that would have to be assessed would include: exposure to chemicals; exposure to noise, radiation, or other physical hazards; ergonomics hazards; procedures to handle chemicals that have physical effects such as flammability and reactivity; machine guarding; shoring of trenches; and potential for falls. Programs must include provisions for regular worksite inspections to determine if existing controls are working, and to identify uncontrolled hazards; investigations of accidents, or other unusual incidents; analysis of planned and new facilities, processes, materials and equipment; job hazard analysis; an employee hazard reporting system; and analysis of injury and illness trends.

10) Do existing programs you are familiar with include worksite analysis? How is it implemented, and who is responsible for doing it? Please provide examples of how this element is being implemented in existing programs. What criteria are used to determine what hazards are present? Are there OSHA standards, guidelines, or other documents you can recommend to assist employers? What do you consider to be the most significant hazard in the workplace?

11) Do existing programs include chemical exposure assessments as part of the worksite analysis process? Should further guidance be provided for exposure assessment? What criteria for exposure assessment are used in existing programs? Is exposure monitoring conducted? What criteria are used to determine when monitoring is to be done? Who is performing exposure monitoring? What training or background did they have to prepare them for this? Are other types of hazards subject to monitoring (such as noise, radiation)? What criteria are used to monitor these hazards?

12) Do existing programs include an ergonomics component? How are ergonomics problems identified? What criteria are used? Who does the evaluation, and what is their relevant training or background?

13) Has any illness/injury trend analysis been undertaken in facilities with COSH programs? What have the trends shown? What action was taken as a result of the findings? Please provide any trend data you have to demonstrate the effect of such programs.

14) What problems have been encountered in implementing this element in existing programs? How were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Hazard prevention and control. Once the hazards have been identified, the third element the COSH program must address is hazard prevention and control. The current and potential hazards must be corrected or controlled in a timely manner, using engineering techniques where feasible and appropriate.Procedures for working safely are to be established, and all affected parties must understand and follow them. Personal protective equipment is to be made available where appropriate; administrative controls are to be used when necessary; provision is to be made for repair and maintenance of equipment; emergency preparedness is to be addressed; and a medical program must be available.

15) Do existing programs you are familiar with include hazard prevention and control? How is it implemented, and who is responsible for doing it? Please provide examples of how this element is being implemented in existing programs. In particular, please provide any available information about how hazards and risks are defined, and how risk reduction goals are set. Who decides what control measures are implemented? What criteria are used? Does the program include an evaluation of occupational safety and health implications when new facilities, processes, materials, or equipment are planned?

16) Do existing programs include standard operating procedures for repair and maintenance?

17) Are their programs for emergency preparedness? If so, how are they compiled and made available? Is there a plan for emergency response? If so, what types of emergencies are addressed? Please provide samples of your standard operating procedures and emergency preparedness and response plans.

18) Is a medical program available? What is the scope of the program, e.g. does it cover assessments related to workplace conditions, wellness programs, etc.? Are medical services provided in-house, or are they contracted out? What types of health professionals are involved in delivering occupational health services? What are their respective roles and what is their relevant training or background?

19) Does the medical program include preplacement medical surveillance? Periodic medical surveillance? What criteria are used to determine what surveillance is done? Who decides what surveillance is to be done? Are medical records reviewed to determine if there are trends in injuries and illnesses? Who conducts the review? What is done with the results?

20) Have problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Safety and health training. The last major element in the voluntary guidelines for COSH programs is safety and health training. In order to ensure that the program works effectively, all employees must be trained to understand the safety and health concerns in their workplace; the plan to minimize or eliminate those concerns; and their roles in implementation of the plan. This includes training for those in supervisory or management roles. Responsibilities must be clearly described, and the lines of authority appropriately drawn. OSHA has published Voluntary Training Guidelines to provide employers with information about designing and implementing an appropriate safety and health training program. (See Training Requirements in OSHA Standards and Training Guidelines, OSHA 2254 (Revised), 1992.)

21) Do existing programs include safety and health training? How is it implemented, and who is responsible for performing and implementing it? Please provide examples of how this element is being implemented in existing programs, including the type of training, such as classroom instruction, on-the-job work practices training, videotapes, or interactive videos. Does the type of training vary with the type of operation? Have OSHA's Voluntary Training Guidelines been used in designing and implementing the safety and health training program?

22) Is safety and health training conducted prior to workplace assignment? What does it include in this situation? Are training requirements for various programs combined into one training program? Approximately how long does the initial training take for managers? For supervisors? For other workers? Is periodic training conducted? How often? How long does

periodic training take? What is included in the periodic training?

23) Do you have workers who are subject to training certification requirements? How has this worked?

24) Is the training evaluated to determine whether or not it is effective? How is this done?

25) What qualifications do the trainers have?

26) Have problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Issues Related to Regulation

If OSHA determines that it would be appropriate to promulgate a standard for COSH programs, there are a number of other issues which will have to be addressed. Comments from the public are solicited on the following:

27) Should the voluntary guidelines OSHA issued in 1989 be the primary basis for any future regulatory activity in this area? Based on your experiences, what modifications to the guidelines would be necessary in order for OSHA to use them as a basis for regulation? Are there additional elements that should be included in a COSH program? What other information do you think employers would need to implement an appropriate program?

28) The current guidelines are very generally written, and OSHA believes they can be applied in any type of industry or workplace. Do you think that industry-specific guidelines are required? If so, what should the breakdown be, and what is the rationale for different program requirements?

29) The current guidelines are also applicable to all sizes of industries. Do you think that small businesses should be treated differently? If so, why, and in what way?

30) It has been suggested that if OSHA promulgates requirements for COSH programs, there are existing OSHA standards that could be revised, modified, consolidated, or otherwise changed as a result. Without diminishing employee protections under current OSHA standards, what rules do you think could be reconsidered if the Agency promulgates a new rule requiring COSH programs? Commenters are requested to be specific, and provide the rationale for any suggestions.

31) If OSHA promulgates a rule for COSH programs, what type of outreach or compliance assistance materials would you suggest be made available to employers? What would be the most effective way for OSHA to reach small employers who do not belong to trade associations or professional societies?

D. OSHA is aware of the increased usage of Flexible Intermediate Bulk Containers (FIBC's) which are used to handle bulk chemical solids. Some of the FIBC's are designed only to be used for one voyage while others are designed for repeated usage. OSHA wishes to know: 1) What means are used to mark and identify the one use only type of FIBC, and are they adequate? and 2) What are the current industry practices regarding the testing of FIBC's and should OSHA incorporate them into this regulation?

E. OSHA issued a standard for the control of hazardous energy sources (lockout/tagout) that applied to general industry employment under 29 CFR part 1910 as §1910.147 (54 FR 36645). This standard addresses practices and procedures that are necessary to disable machinery or equipment and to prevent the release of potentially hazardous energy while maintenance and servicing activities are being performed. The standard requires that lockout be utilized for equipment which is designed with a lockout capacity, and tagout may be used for equipment which was not designed to be locked out. Servicing and maintenance activities are necessary adjuncts to the industrial process.They are needed to maintain the ability of all machines, equipment, or processes to perform their intended functions. OSHA believes that these types of operations present the employee with the same types of hazards of unexpected activation, re-energization, or the release of stored energy, regardless of the type of industrial setting. For these reasons, OSHA is soliciting public comment regarding the appropriateness of including "The control of hazardous energy (lockout/tagout)" in the "Scope and applicability" sections of both 29 CFR part 1917 (Marine Terminals) and 29 CFR part 1918 (Longshoring). While OSHA recognizes that marine terminal activities are more likely to contain work operations where lockout/tagout hazards are present, it also sees the potential to occur in some longshoring related operations. OSHA wants to know: 1) should §1910.147 be included in Marine Terminals and why or why not, and 2) should §1910.147 be included in longshoring and why or why not?

F. As indicated earlier, OSHA contracted a safety expert, A. J. Scardino, to conduct a study of the fall hazards associated with the cargo handling of intermodal containers. (Ex. 1–139). The development of the data that was used in formulating the opinions and recommendations of this study, involved the visiting and documentation of the activities at 20 major ports in the United States. Those ports were: Gulfport, MS, Houston, TX, Barbers Cut, TX, Galveston, TX, Miami, FL, Miami River, FL, Port Everglade, FL, Charleston, SC, Savannah, GA, Norfolk, VA, Portsmith, VA, Elizabeth, NJ, New Jersey, NJ, Long Beach, CA, Los Angeles, CA, Seattle, WA, Tacoma, WA, Oakland, CA, San Francisco, CA, Honolulu, HI. As part of the data gathering process the contractor conferred with: members of the Technical Committee of the National Maritime Safety Association, representatives of Labor Associations, individual Stevedores, Longshore personnel, and Port representatives.

Of the many areas of inquiry that resulted in positive recommendations, the issue of the location of the fixed anchorage point in relation to the working surface was addressed:

> When feasible the attachment point of the fall protection system shall be located "above" the head of the employee. Every effort should be made to assure that the attachment point for the system is located no lower than the vertical height position of the harness "D" ring. According to "Humanscale 7a", for the 50th percentile male, this would be 1.4 meters (55.4 inches).

In support of this position, the study cites the National Safety Council in its *Accident Prevention Manual for Industrial Operations 9th. Edition* (the Bible on Safety) states: (p. 347) "A belt or harness is worthless unless it is being worn at the time that a fall is possible and attached to a lanyard or fall arrestor with an *adequate overhead anchorage.*" (Emphasis added; Id. p. 3.) In addition Mr. Scardino indicates the importance of pre-exposure planning by citing Best's Safety Directory 1994 Edition which states: (p634) "A fixture point above head height always should be planned." (Id.)(Ex. 1–153).

With regard to current practice, many fall protection systems in use could meet the raised attachment requirement recommended by Mr. Scardino " * * * approximately 70 to 75% of the existing operations that employ various fall protection techniques would be able to meet * * *" the requirement. (Id.) Some existing systems have attachments to devices that are installed on the work surface. Recommendations addressing these systems include:

> The use of systems that are at foot level, thereby creating a tripping hazard, should be discouraged. If these systems are to be used, then, the components that make up the system should be of a high visibility color. This field study further determined that the

systems were not reliable and created a sense of false security.

While it is recognized that there is in existence, fall protection that does not meet this criteria, steps should be taken to meet these minimums *within a three year period.*

In light of these recommendations, OSHA wishes to raise an additional issue. To what extent is it necessary and appropriate to add an additional criteria to those found in §1918.85(k) requiring an elevated anchorage point in order to assure worker safety.

VIII. Preliminary Regulatory Impact and Regulatory Flexibility Analysis

Note: Numbered references that appear in brackets in this Section VIII, Preliminary Regulatory Impact and Regulatory Flexibility Analysis, are to the References that appear at the end of Section VIII.

A. Executive Summary

Introduction

Executive Order 12866 and the Regulatory Flexibility Act require OSHA to analyze the costs, benefits, and other consequences and impacts associated with proposed standards. Consistent with these requirements, OSHA has prepared this regulatory impact analysis for the proposed revisions to the Longshoring and Marine Terminals standards.

This analysis includes a description of the industries affected by the regulation, an evaluation of the risks addressed, an assessment of the benefits attributable to the proposed revisions, the determination of the technological feasibility of the new requirements, the estimation of the costs of compliance with proposed revisions, the determination of the economic feasibility of compliance with the proposed revisions, and an analysis of the economic and other impacts associated with this rulemaking.

Affected Industries

The requirements of the proposed revisions apply to all establishments involved in marine cargo handling. As classified by the 1987 Standard Industrial Classification (SIC) manual, this industry consists of establishments in SIC 4491 as well as establishments in other SICs conducting marine cargo handling activities.

Evaluation of Risk and Potential Benefits

An estimated 7,593 injuries and 18 fatalities occur annually during marine cargo handling activities. The proposed revisions to the Longshoring and Marine Terminals standards are expected to result in the prevention of 1,262 injuries and 3 fatalities, annually. Many additional fatalities and injuries would be prevented through full compliance with existing requirements retained in the proposed standards. Most of the injuries occurring during marine cargo handling activities could be prevented through compliance with the existing as well as with the proposed standards. In addition to the unquantifiable benefits associated with the reduction in pain and suffering associated with these incidents, the prevention of these injuries will result in savings of over $18 million dollars, annually. This estimate includes savings related to wage and productivity losses, medical costs, administrative expenses, and other costs associated with accidents.

Technological Feasibility

Since the proposed requirements can be met using existing equipment and methods, the proposed new requirements are considered to be technologically feasible.

Costs

The estimated costs associated with the proposed revisions to the Longshoring and Marine Terminals standards amount to less than $4.7 million for the first year and less than $1.8 million, annually, after the first year. These costs primarily reflect the sum of various minor expenditures associated with modifications to existing standards. New provisions involving compliance costs include requirements for sideboards on dockboards and ramps, required certification of fall protection systems, requirements for the vertical application of lifting forces to containers, requirements for high visibility vests, and requirements to provide personal flotation devices, among others.

Economic Impacts

Compliance with the proposed new requirements of the Longshoring and Marine Terminals standards has been determined to be economically feasible and is not expected to produce any significant adverse economic impacts. The costs that are imposed by the regulation should be a minimal burden on marine cargo handling establishments. The total estimated first-year costs of compliance represent less than 0.06 percent of revenues associated with marine cargo handling activities and less than 1.19 percent of profits. Total annualized costs for subsequent years represent less than 0.03 percent of revenues and 0.46 percent of profits.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, OSHA has made an assessment of the impact of the revised standards and has concluded that it would not have a significant impact upon a substantial number of small entities. The estimated compliance costs do not involve large capital expenditures, and there is no significant differential effect on small firms relative to that on large firms.

B. Industry Profile

Introduction

This section provides an overview of affected establishments, classifications of affected vessels, population at risk, wages of affected workers, gang sizes and cargo handling rates, operating revenues and shipping costs.

Overview of Stevedoring and Marine Terminals

Marine terminals are designated areas of ports which include wharves, bulkheads, quays, piers, docks and other berthing locations. Adjacent storage or contiguous areas associated with the primary movements of cargo or materials from vessel to shore or shore to vessel, and structures devoted to receiving, handling, holding, consolidating, loading or delivering waterborne shipments are considered part of the marine terminal. Marine terminals are the facilities owned or leased by stevedores or marine terminal operators (MTOs). MTOs and stevedores provide most of the portside services that shipping lines require. They provide the equipment and machinery for conducting cargo handling at multi-use terminal facilities, in addition to specialized terminals designed to handle specific types of cargo [2].

Stevedores are persons or firms contracting with a ship owner or agent for the purpose of loading or unloading ships or barges in ports. Stevedores are direct employers of longshore labor and contractors to ship owners. Basically, they are middlemen between the entity requiring the service and the longshore workers who perform the physical labor. The stevedore's role is to provide the cargo handling expertise and the equipment required to load or unload all types of cargo safely and efficiently.

The stevedore may also be the MTO. The functional roles and activities of stevedores and MTOs vary throughout the United States and often cannot be distinguished. The stevedore contractor and the MTO may be distinctly different entities, the same entity, or corporately related. In some cases, public entities or port authorities may be the MTOs. These entities may also act as stevedores or lease the terminals to private operators [2].

Workplaces Affected

Compliance with the proposed revisions to the Longshoring and Marine Terminals standards will affect two

areas where marine cargo handling operations occur. Activities that occur off the dock (work aboard vessels) are covered under OSHA's Longshoring standard (29 CFR part 1918) and those which occur on the dock fall under the Marine Terminals standard (29 CFR part 1917). The Longshoring standard covers establishments classified under SIC 4491 (marine cargo handling), as well as various establishments in manufacturing; transportation; communications; electric, gas and sanitary services; and wholesale trade.

Data on the exact number of stevedoring companies currently operating in the United States are not available. For the purposes of this analysis, the number of marine terminals estimated by the Maritime Administration (MARAD) was used as the estimate of the total number of firms affected by the Longshoring standard. According to MARAD, there are a total of 3,700 marine terminals in the United States [4]. Establishments engaged primarily in marine cargo handling are classified under Standard Industrial Classification (SIC) 4491, Marine Cargo Handling. The Bureau of the Census estimated that 746 establishments are classified under SIC 4491 [7]. To identify other affected industry sectors, Kearney/Centaur screened OSHA inspection data for non-SIC 4491 sectors where 29 CFR part 1918 citations were issued. Non-SIC 4491 establishments primarily engage in activities other than longshoring, although longshore work is a small part of their overall operation. For example, manufacturing establishments which load their products directly onto barges are covered by the OSHA's Longshoring standard, though these operations represent only a very small part of their total activity. Kearney/Centaur estimated the distribution of the remaining establishments among affected industry sectors according to the distribution of non-SIC 4491 29 CFR part 1918 citations issued in other sectors. The estimated number of affected establishments is shown in Table B-1 by industry and in Table B-2 by region. Although only 20 percent of establishments affected by the longshoring standard are in SIC 4491, the majority of affected workers, as discussed below, are accounted for in SIC 4491.

Table B–1—Number of Affected Establishments, by Industry

Industry	Longshoring 29 CFR part 1918	Marine Terminals 29 CFR part 1917
SIC 4491–Marine Cargo Handling	746	746
Manufacturing	1660	N/A
Transportation, Communications, and Electric, Gas and Sanitary Services	662	662
Wholesale Trade	273	161
Other SICs[1]	359	359
TOTAL	3,700	1,928

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

[1]Other SICs include SIC 13 (Oil and Gas Extraction), SIC 15 (Building Construction), and sectors under SIC 44 (Water Transportation) other than SIC 4491.

Table B–2—Number of Affected Establishments, by Region

Industry	Longshoring 29 CFR part 1918	Marine Terminals 29 CFR part 1917
Atlantic	586	305
Gulf/Mississippi	2,164	1,128
Great Lakes	301	157
Pacific	649	338
TOTAL	3,700	1,928

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Of the industry sectors covered by the Longshoring standard, most also fall under the scope of the Marine Terminals standard, with the exception of manufacturing establishments and some wholesale trade establishments. Approximately 1,928 of the 3,700 marine terminals covered by the Longshoring standard are estimated to fall under the scope of the Marine Terminals standard [1].

The stevedore/MTO typically hires longshore workers, usually on a daily basis, from a hiring hall or labor pool of union or nonunion members. Labor force size varies directly with the amount of work contracted to be performed. This method of hiring creates difficulty in determining the size of the affected establishments. No data were available on the number of small stevedoring firms. To estimate the number of small firms, the percent of establishments in SIC 4491 classified by the Bureau of the Census as employing fewer than 20 workers, is used. Fifty-six percent of affected establishments are estimated to be small establishments [7].

Types of Vessels

This discussion describes the affected vessels calling at U.S. marine terminals. The proposed rule will be applicable to five broad vessel categories. Four of these categories are self-propelled vessels: bulk carriers, freighters, combination passenger/cargo ships, and cruise ships. The fifth category consists of non-self-propelled dry cargo barges. Descriptions of these vessel categories, as well as important subcategories, are presented in Tables B-3 and B-4. Tankers and tanker barges are excluded since these vessels are primarily under the jurisdiction of the U.S. Coast Guard.

Table B–3—Categories of Self-Propelled Vessels

BULK CARRIERS	
Ships designed to carry dry bulk cargo such as ore, wood chips, coal, and grain. They are also used to carry heavy general cargo items such as logs or steel.	
FREIGHTERS	
General Cargo Carriers	Includes refrigerated and unrefrigerated breakbulk carriers as well as car carriers, cattle carriers, pallet carriers, and timber carriers. Breakbulk cargo consists of heterogenous items of general cargo, packaged and moved as single parcels or assembled together on pallet boards and wire rope slings. These packages are loaded and unloaded using ship's gear or wharf cranes. Containers are also carried on general cargo carriers.
Full Containerships	Ships equipped with permanent below-deck container cells with little or no space for other types of cargo.
Partial Containerships	Multi-purpose ships where one or more, but not all, compartments are fitted with permanent container cells. The remaining compartments are used for other types of cargo. Partial containerships include container/car carriers, container/rail car carriers, and container/roll-on/roll-off ships.
Roll-On/Roll-Off (RO-RO) Ships	Ships which are specially designed to carry wheeled containers or container/trailer combinations, automobiles, and other vehicles which are loaded and unloaded using the roll-on/roll-off method. Containers are often carried on the upper deck of RO-RO ships.

Table B–3—Categories of Self-Propelled Vessels—Continued

Barge Carriers	Ships designed to carry either barges or some variable number of barges and containers simultaneously. Currently this class includes two types of vessels, the LASH (lighter aboard ship) and the SEABEE. They differ in that barges are loaded onto LASH ships by crane and onto SEABEE ships by a submersible elevator at the stern of the vessel.
COMBINATION PASSENGER/CARGO SHIPS	
Cargo ships with a capacity for 13 or more passengers.	
CRUISE SHIPS/PASSENGER SHIPS	
Ships functioning primarily to transport passengers, usually for purposes of recreation and tourism. Does not include passenger ferries.	

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Table B–4—Non-Self-Propelled Vessels

DRY CARGO BARGES	
Large mostly double hulled cargo holds lacking an internal means of propulsion. Virtually all barges used on the inland river system are 195 feet long by 35 feet wide and have loaded drafts of up to nine feet. Barges can carry virtually any dry cargo and have and average capacity of 1,500 tons or about 52,500 bushels. Also classified as barges are scows and ocean-going barges. These barges tend to be much larger and have a higher freeboard than barges used on the inland river system.	
Barges are typically lashed together in groups referred to as tows. The standard tow on most navigable rivers is three barges wide by five barges long for a total of 15 barges. Tow sizes, however, vary by waterway with tows as large as 45 barges on the lower Mississippi and as small as two barges on the intracoastal waterway. Tows are usually propelled by a towboat pushing them ahead, though occasionally they are moved by a towboat pulling them on a hawser.	
Open Hopper	Barges used primarily for dry bulk cargo, such as sand, gravel,and coal, which are not suseptible to weather damage.
Covered Hopper	Barges used for grain and other commodities that need to be protected from the weather.
Scows and Ocean-Going Barges	Barges which generally carry most of their cargo on deck.
Deck Barges	Barges used for transporting vehicles and heavy equipment.
Container Barges	Barges used to transport standardized container cargo.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Self-Propelled Vessels

Table B–5 shows the number of self-propelled vessels of 1,000 gross tons (GTs) and over in the world fleet, by type of vessel. Of the 692 U.S. flag vessels, approximately two-thirds are privately owned and the remaining one-third are Government owned. Only 11 of the 225 Government owned vessels were active as of mid–1992 and were being used by several Government agencies, state maritime academies, or private steamship companies under various forms of agreement with the Maritime Administration. All U.S. flag vessels are owned either by the Government or U.S. firms. However, U.S. firms also own a substantial number of merchant vessels that are registered under foreign flags. As shown in Table B–5, 313 of the 23,549 foreign flag vessels are owned by U.S. parent companies. Although no data were available on the total number of self-propelled vessels in the world fleet of under 1,000 Gts, data were available on the number of vessels calling at U.S. ports. According to Bureau of the Census data [5], approximately 1,980 U.S. flag and 9,593 foreign flag self-propelled vessels called at U.S. ports in 1992.

Table B–5—Self-Propelled Vessels of 1,000 Gross Tons and Over in the World Fleet, 1992

Vessel Type	U.S. Flag Vessels			Total Number of Foreign Flag Vessels	Foreign Flag Vessels Owned by U.S. Companies	World Fleet
	Private	Government	Total			
Bulk Carriers	92	1	93	5,449	47	5,542
Tankers	203	25	228	5,316	208	5,544
Total Freighters	167	192	359	12,222	55	12,581
Break Bulk Carriers	26	120	146	9,977	29	10,123
Containerships	83	9	92	1,198	15	1,290
Partial Containerships	17	35	52	110	0	162
Roll-On/Roll-Off	29	21	50	916	7	966
Barge Carriers	12	7	19	21	4	40
Combination Passenger/Cargo	3	7	10	337	3	347
Cruise Ships/Passenger Ships	2	0	2	225	N/A	227
TOTAL	467	225	692	23,549	313	24,241

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Non-Self-Propelled Vessels

The total number of non-self-propelled vessels is shown in Table B–6. Of the 31,017 non-self propelled vessels, 87 percent are dry cargo barges, 13 percent are tanker barges, and less than 1 percent are railroad car floats. Nearly 86 percent of all non-self-propelled vessels in the United States operate on the domestic river and intracoastal waterway system and carry nearly all of the waterborne cargo transported on the inland waterways. Thirteen percent of the non-self-propelled vessels (4,158 vessels) in the United States operate on the Atlantic, Gulf and Pacific coasts. The remaining 1 percent of non-self-propelled vessels operate in the Great Lakes.

Table B–6—Non-Self-Propelled Vessels in the U.S. (as of December 31, 1990)

Vessel Type	Atlantic, Gulf and Pacific Coasts	Inland Waterways[1]	Great Lakes	Total
Dry Cargo Barges	3,500	23,320	271	27,091
Tanker Barges	652	3,231	30	3,913
Railroad Car Floats	6	2	5	13
TOTAL	4,158	26,553	306	31,017

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].
[1]Includes Mississippi River System, the Gulf and Atlantic Intracoastal Waterway and the Columbia/Snake River System.

Containers and Container-Carrying Vessels

Over recent years, there has been an increase in the volume of containerized cargo handled. Containers are large, standard size metal boxes, equipped with corner castings, into which cargo is packed for shipment. Containers are designed to be moved with common handling equipment enabling economical, high-speed intermodal transfers in large units between ships, railcars, truck chassis, and barges, using a minimum of labor. The container, therefore, serves as the transfer unit rather than the cargo contained therein. Most containers in the U.S. inventory are either 20-foot (6.1 m) containers (56 percent) or 40-foot containers (12.2 m) (42 percent).

Containerships are vessels equipped with permanent container cells. They have little or no space for other types of cargo. Partial containerships are multi-purpose ships where one or more, but not all, compartments are fitted with permanent container cells. The remaining compartments are used for other types of cargo. Several other types of vessels also carry containers.

Table B-7 presents the number of liner service container-carrying vessels calling at U.S. ports by type of vessel, flag of vessel (U.S. or foreign), and container capacity.

Table B–7—Number and Container Capacity of Liner Service Container Carrying Vessels Calling at U.S. Ports, 1992

Vessel Type	Number of Vessels			Container Capacity in TEUs[1]		
	U.S.	Foreign Flag	Total	U.S.	Foreign Flag	Total
Bulk/Containership	0	106	106	0	130,279	130,279
Containership	83	510	593	183,358	1,126,341	1,309,699
RO-RO/Containership	7	36	43	10,031	51,584	61,615
Partial Containership	17	135	152	7,422	58,961	66,383
Barge Carrier	11	0	11	6,940	0	6,940
Other						
Break Bulk	N/A	N/A	11	N/A	N/A	3,161
RO/RO[2]	29	75	104	28,509	73,748	102,257
TOTAL	147	862	1,020[3]	236,260	1,440,913	1,680,334[4]

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].
[1]TEU - Twenty-foot Equivalent Unit: equal to the capacity of a 20x8x8 foot container.
[2]Includes 13 RO-RO tug/barge combinations.
[3]Number of U.S. and foreign flag vessels does not add to the total shown since a breakdown of the number of break bulk carriers between U.S. and foreign flag fleets was not available.
[4]The container capacity of U.S. and foreign flag vessels does not add to the total shown since a breakdown of the container capacity of break bulk carriers between U.S. and foreign flag fleets was not available.

Vessels in liner service operate on fixed routes to advertised ports on published schedules. As shown in the table, 1,020 container-carrying liner service vessels with a total container capacity of approximately 1.7 million TEUs (twenty-foot equivalent units) called at U.S. ports in 1992. Virtually all containerships, partial containerships, bulk/containerships, RO RO/containerships and barge carriers are in liner service, and essentially, the entire container capacity of these types of vessels are accounted for in liner services. Break bulk freighters and RO-RO ships also carry containers. Although RO-RO ships are generally in liner service, break bulk carriers are not. Data on the number and container capacity of non-liner service break bulk carriers were unavailable. However, based on the proportion of container traffic accounted for by break bulk freighters, the estimated number of voyages made annually to the United States by these vessels, and their average container capacity, Kearney/Centaur estimated that 544 non-liner service break bulk freighters with a container capacity of 78,336 containers called at U.S. ports in 1992.

Combining the number of liner service and non-liner service container-carrying vessels, OSHA therefore estimates that a total of 1,564 container-carrying vessels, with an overall container capacity of 1.76 million TEUs, call annually at U.S. ports [1]

Population at Risk

Based on employment data from the Bureau of the Census and OSHA inspection data, approximately 93,427 workers are estimated to be affected by the Longshoring standard, over 58 percent of which are employed in SIC 4491. Kearney/Centaur estimated that about 70,140 of these workers would also be covered by the Marine Terminals standard, 78 percent of which are in SIC 4491. Estimates of full-time equivalent workers, as well as the population at risk are shown in Table B-8, by industry and in Table B-9, by region.

Table B–8—Number of Full-Time Equivalent Workers and Population at Risk, by Industry

Industry	Number of FTE Workers Covered by 29 CFR part 1918[1]	Population at Risk Covered by 29 CFR part 1918	Number of FTE Workers Covered by 29 CFR part 1917[1]	Population at Risk Covered by 29 CFR part 1917
SIC 4491–Marine Cargo Handling	54,617	54,617	54,617	54,617
Manufacturing	18,700	21,811	N/A	N/A
Transportation, Communications, and Electric, Gas and Sanitary Services	7,467	8,705	7,467	8,705
Wholesale Trade	3,100	3,582	1,823	2,106
Other SICs[2]	4,067	4,712	4,067	4,712
TOTAL	87,951	93,427	67,974	70,140

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

[1]The number of full-time equivalent (FTE) workers is based on a 1,436 hour which is the average number of hours worked per year by longshore workers in SIC 4491.

[2]Other SICs include SIC 13 (Oil and Gas Extraction), SIC 15 (Building Construction), and other sectors under SIC 44 (Water Transportation) other than SIC 4491.

Table B–9—Number of Full-Time Equivalent Workers and Population at Risk, by Region

Industry	Number of FTE Workers Covered by 29 CFR part 1918[1]	Population at Risk Covered by 29 CFR part 1918	Number of FTE Workers Covered by 29 CFR part 1917[1]	Population at Risk Covered by 29 CFR part 1917
Atlantic	13,923	14,789	10,761	11,103
Gulf/Mississippi	51,451	54,655	39,765	41,032
Great Lakes	7,150	7,596	5,526	5,703
Pacific	15,426	16,387	11,922	12,302
TOTAL	87,950	93,427	67,974	70,140

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

[1]The number of full-time equivalent (FTE) workers is based on a 1,436 hour which is the average number of hours worked per year by longshore workers in SIC 4491.

Gang Sizes and Cargo Handling Rates

Table B-10 summarizes the average stevedoring crew sizes by type of operation. These estimates include both off-the-dock and dockside workers directly involved in the loading or unloading of cargo. Average cargo handling rates are also presented. Based on cargo handling rates, and the types and total tonnages of cargo handled, Kearney/Centaur estimated that approximately 54 million person-hours of exposure occur during longshoring loading and unloading activities, annually.

Table B–10—Summary of Average Stevedoring Gang Size and Cargo Handling Rates, by Type of Loading and Unloading Operation

Operation	Number of Workers			Average Cargo Handling Rate in Short Tons per:		
	Off-the-Dock	On-the-Dock	On-Site	Gang Hour	Off-the-Dock Employee Work-hour	Dockside Employee Work-hour
Break Bulk	9	6	15	80.0	8.9	13.3
Container	8	9	17	232.9	29.1	25.9
Bulk Carrier/Conveyor Loading	7	2	9	1,250.0	178.6	625.0
Bulk Carrier/Clam Shell Unloading	2	3	5	250.0	125.0	83.3
RO-RO	25	4	29	90.0	3.6	22.5
Barge/Break Bulk	4	5	9	112.5	28.1	22.5
Barge/Conveyor Loading	2	3	5	168.8	84.4	56.3
Barge/Bulk-Clam Shell Unloading	1	2	3	150.0	150.0	75.0

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Wages

Wages of longshore workers vary among regions and ports.Two primary factors account for this variation. First, local union contractual agreements vary in wage rates, holidays, and other rules or benefits which affect the wages and earnings of longshore workers. Second, the number of hours worked per year varies by port and region, resulting in variations in overtime wage payments. The average national wage rate of longshore workers, including overtime and benefits, is estimated to be $40.30 per hour. The average supervisor wage rate, including overtime and benefits, is estimated at $50.78 [1].

Operating Revenues and Shipping Costs

Statistics on shipping costs were estimated based on vessel operating revenue data for domestic water carriers compiled by The U.S. Department of Transportation. Table B-11 presents operating revenues and tonnage data, by region, for 1990.

As shown, operating revenues were nearly $3.0 billion for Coastal regions, $2.9 billion for Inland waterways, and $0.6 billion for the Great Lakes region. The operating revenues per ton of freight hauled were $10.27, $4.57 and $5.33, respectively.

The cost for shipping a 40-foot (12.0 m) container with FAK (freight-of-all-kinds) worth $100,000 and weighing 10 long tons from New York to Rotterdam was estimated to range from $277.40 to $300.50 per long ton. The cost for the same shipment from Los Angeles to Tokyo was estimated to range from $243.60 to $288.30 per long ton [1].

Table B–11—Operating Revenues, Ton-Miles, Tons, and Average Haul of Freight Carries, 1990

Region	Operating Revenues ($ millions)	Ton-Miles (millions)	Operating Revenues per Ton-Mile	Tons of Freight Hauled (millions)	Average Haul per (miles/ton)	Operating Revenues per Ton of Freight Hauled
Coastal	$3,008	470,000	$0.006	293	1,604	$10.27
Inland	2,865	283,000	0.010	627	451	4.57
Great Lakes	576	57,000	0.010	108	528	5.33
All Regions	$6,449	810,000	$0.008	1,028	788	$6.27

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

C. Technological Feasibility and Costs of Compliance

Technological Feasibility

All of the requirements of the proposed standard can be met using currently available equipment, facilities, tests, inspections, supplies, and work practices. OSHA's analysis of the technological requirements of each provision indicates that none of the proposed provisions will create any problem of supply or availability of equipment, facilities, or personnel.

Although the proposed standard will require the expenditure of resources to fully comply, there are no technological constraints associated with full compliance with the proposed regulation.

Costs of Compliance

This section presents preliminary estimates of costs that will be incurred by firms to come into compliance with the proposed revisions to the Longshoring and Marine Terminals standards. The costs of the proposed revisions to the two standards are shown in Table C–1.

Table C–1—Summary of Total Compliance Costs (1993 Dollars)

Rule	Total First-Year Costs	Total Annualized Costs*
29 CFR part 1918: Longshoring	$4,088,445	$1,755,773
29 CFR part 1917: Marine Terminals	535,585	20,099
TOTAL	$4,624,029	$1,775,872

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

* Annualized cost is the sum of annualized capital costs and recurring annual costs.

Total first-year costs are estimated to amount to less than $4.7 million. After the first year, affected establishments will incur costs of approximately $1.8 million, annually. These costs were estimated using a baseline of full compliance with existing rules and estimates of current practice for those cost elements not required under previous standards[2]. OSHA welcomes comments on the preliminary costs and assumptions presented in this analysis.

Methodology

A side-by-side comparison of the proposed and existing rules was conducted to identify revisions to the existing rules. In addition, a profile of current industry practices was developed to enable estimates of incremental compliance costs to be made.

The data used in this preliminary analysis of compliance costs were obtained from three studies conducted in 1986, 1989 and in 1994 by OSHA's contractor, Kearney/Centaur. In 1986 and 1989, analyses were performed on proposed requirements identified as changes to existing standards. These studies were conducted through field visits and telephone surveys of U.S. ports.

The 1994 study was conducted to update information collected in previous studies and to collect information on the impact of proposed revisions made recently to the Longshoring and Marine Terminals standards. Efforts included interviews with industry officials to gather information on key cost issues, and calls to equipment manufacturers, suppliers, and professional service providers.

Three general types of costs were identified: first-year costs, capital costs, and recurring annual costs. First-year costs are training and workplace analysis costs that which are expected to be incurred in the first year after promulgation of a final rule. Capital costs are costs for equipment with a working life of more than one year. Recurring annual costs are costs that will be incurred each year after promulgation of a final rule.

The majority of compliance costs are expected to be borne directly by stevedoring companies, although vessel operators may incur some short-term costs.

Revisions to 29 CFR part 1918: Longshoring

This section presents preliminary cost estimates attributable to proposed revisions to OSHA's Longshoring standard. Provisions for which costs are not specifically addressed are not expected to have any incremental costs beyond those estimated for workplace analysis and general training.

General First-Year Costs

Proposed revisions to the existing Longshoring standard will result in general costs for workplace analysis and training. Total first-year costs for these activities are estimated at $1,607,563, and will most likely be borne by stevedoring firms.

Workplace Analysis

Workplace analysis involves evaluating an establishment to determine what needs to be done to achieve compliance with the proposed

[2] This is not intended to suggest that all establishments are fully complying with existing regulations. However, the costs presented in this analysis reflect only those costs which are attributable to to proposed revisions to existing regulations.

rule. Preliminary costs for this activity are estimated using the hourly wage rate of a safety consultant or safety engineer. The average hourly fee for a safety consultant is estimated to be $87.50, based on a range of $50 to $125 per hour [1]. The average time per establishment to have a safety consultant conduct such an analysis is estimated to be about an hour and a half [1]. This yields an average cost per facility of $131.25. The total first-year workplace analysis cost across all 3,700 affected establishments is estimated to be $485,625. This cost will most likely be borne by stevedoring firms.

Training

First-year costs will be necessary to train supervisors on the new requirements of the proposed rule. No recurring annual training costs are estimated since interviews with industry officials indicated that longshore supervisors receive regular safety training, and training in new requirements will replace safety training related to the existing rule. Kearney/Centaur field visits, and telephone interviews with longshore safety experts and industry officials revealed that supervisors will assure implementation of proposed requirements. No additional training time will be required for longshore workers. The proposed rule will result in three types of training: (1) general training in new requirements; (2) additional safety training for RO-RO and containerized operations; and (3) accident prevention proficiency training for supervisors overseeing five or more workers. The costs of additional training for container and RO-RO operations, and accident prevention proficiency training will be discussed under the appropriate subparts.

OSHA assumes that first-year supplementary general training will be required to familiarize supervisors with the new requirements of the proposed rule. The number of supervisors that will need general training is estimated using a 10 to 1 employee to supervisor ratio. As discussed in the Industry Profile, approximately 93,427 workers are estimated to be at risk. Hence, 9,343 supervisors are estimated to require general training. Kearney/Centaur estimated that less than one hour of training, in addition to regular safety training, will be necessary to train each supervisor. Using an average supervisor wage rate of $50.78, the total first-year cost of supervisor time to receive general training is estimated at $474,438.

In addition to the cost of supervisor training time, the cost to provide safety instruction is estimated. The fee for an instructor is estimated to be about $175 per hour of training [1]. The total cost for general safety instruction is estimated at $647,500.

Subpart C: Means of Access

Most of the proposed revisions to this subpart are not expected to impose additional costs on affected establishments. For example, proposed requirements for portable ladders are already addressed in the existing Marine Terminals standard. Since portable ladders used on the vessel are typically the same ladders used on the dock, no incremental costs are expected to be incurred. No additional costs are expected to result from requiring 6 inches (15.2 cm) or more of clearance in the back of ladder rungs. This requirement can be met using portable ladders, which are currently available on-site [1].

The proposed requirement for 6 inch (15.2 cm) sideboards on dockboards and ramps is expected to impose additional costs on stevedoring firms. Based on Kearney/Centaur interviews with regional industry representatives, approximately 1,070 ramps will need to be retrofitted at a unit cost of $1,000 [1]. The incremental capital cost for this provision is estimated at $1,070,000.

Subpart D: Working Surfaces

In the existing rule, 29 CFR 1918.32(b) requires fall protection for workers exposed to fall hazards at the edge of a hatch section or stowed cargo over 8 feet (2.4 m) high. Although changes to the regulatory text are being proposed for clarification purposes, the proposed language does not impose additional responsibilities upon employers. Hence, no incremental costs are attributed to this provision. This is consistent with court interpretations, as found by the Occupational Safety and Health Review Commission in its decision of October 24, 1979, OSHRC Docket No. 15242 concerning §1918.32(b) citation of Seattle Crescent Container Service, and the decision of the U.S. Court of Appeals, Ninth Circuit in Long Beach Container Terminal Inc. v. OSHRC and Brock, February 23, 1987.

Proposed revisions to Subpart D also include requirements for "walking sticks" (floating walking and working surfaces) for employees working logs out of the water. However, local rules in ports affected by this requirement currently include these requirements, and affected establishments are already in compliance [1].

Subpart E: Opening and Closing Hatches

The proposed rule includes several revisions to this subpart. Proposed revisions impose more restrictions on working spaces along coamings, more flexibility on covering hatches with tarpaulins, and more flexibility on securing hatch covers. The proposed revisions would also require that all unsecured materials be removed before moving hatch covers. Such changes in work practices are not expected to result in incremental costs other than first-year costs for general training discussed earlier in this chapter [1].

Subpart F: Ship's Cargo Handling Gear

Proposed revisions to this subpart address changes in work practices. Costs attributed to changes in work practices are accounted for in the general first-year cost estimates.

Subpart G: Cargo Handling Gear and Equipment Other Than Ship's Gear

This subpart covers all employer-provided gear and equipment used in longshoring operations aboard vessels. The majority of the gear used aboard vessels is also used on the dock. To the extent that proposed revisions to the Longshoring standard covering this gear are addressed by the existing Marine Terminals standard, no incremental costs are estimated.

The proposed rule would require that all special stevedoring gear purchased or fabricated 90 days or more after publication of a final rule, and having a safe working load of 5 short tons or over, be certified by an OSHA accredited agency in accordance with 29 CFR part 1919. Most gear covered under this subpart is either also used on the dock and therefore, already required to be certified under 29 CFR 1917.50, or already certified prior to purchase by the manufacturer. Although situations do arise in which special gear is manufactured and used only on the vessel, such occurrences are rare and the overall cost to affected establishments is expected to be minimal.

Two requirements, however, are expected to impose costs on affected establishments. The proposed requirements for the quadrennial testing of special stevedoring gear and the lockout/tagout of powered conveyors are expected to generate compliance costs.

OSHA assumes that only the 746 establishments classified under SIC 4491 will be affected by the proposed requirement for quadrennial testing of special gear and equipment. Testing is estimated to take an average of five hours per affected establishment. Assuming that a designated person with an average wage rate of $40.30 will do the testing, the average cost per

establishment is estimated to be $201.50 every four years, or $50.38 annually. The total annual cost for affected establishments to comply with this provision is estimated at $37,583 [1].

Compliance costs are also expected to result from the proposed revision requiring the lockout/tagout of powered conveyors. Those conveyors with master shut-off switches used only aboard vessels and not on the dock will be affected. Kearney/Centaur estimated that existing switches on a total of 60 powered conveyors would need to be replaced by general duty 240 volt/100 amp, 3 pole, fused, lockable safety switches. The unit cost for switch replacement, including installation charges, is estimated to be $315 each ($130 for materials cost, $112 direct labor, $73 overhead and other charges) [1]. OSHA estimates that the total capital cost associated with the lockout/tagout of powered conveyors is $18,900. This cost will most likely be borne by stevedoring firms.

Subpart H: Handling Cargo

Nine proposed revisions to the existing rule were identified as substantive changes to the existing rule.

Vertical Lifting of Containers

The proposed rule requires that, when containers are being hoisted by the top fittings, lifting forces must be applied vertically from at least four such fittings. Since container gantry cranes provide vertical lifts, only non-container cranes will be affected. Stevedores using non-container cranes currently use either box spreaders, or wires and hooks to lift containers. The use of box spreaders would provide vertical lifts. Approximately 423 non-container gantry cranes are used to lift containers. However, box spreaders would only need to be purchased for 8 to 20 percent of these cranes [1]. Approximately one 20 foot (6.1 m) box spreader and one 40 foot (12.2 m) box spreader will need to be purchased for 59 cranes (14 percent of non-container cranes). Kearney/Centaur estimated, based on an interview with a box spreader manufacturer, that a 20-foot (6.1 m) box spreader costs about $8,800 and a 40-foot (12.2 m) box spreader costs about $9,800. The total cost per crane to purchase one 20-foot (6.1 m) box spreader and one 40-foot (12.2 m) box spreader is, therefore, estimated at $18,600 ($8,800 + $9,800). Thus, the total capital cost that will be incurred by stevedoring companies to comply with this provision is estimated at $1,101,492 [1].

Prohibiting Work On Top of Containers to the Extent Feasible

The proposed rule would eliminate work on top of container stacks, to the extent feasible, through the use of engineering controls. Compliance with this proposed requirement is considered feasible, for most operations, when container gantry cranes are used to move containers. To secure stacked containers, twistlocks are placed in the corner castings of each container. When manual twistlocks are used, workers are placed, usually by crane, on top of each container to place or remove (cone or decone) twistlocks. The use of semi-automatic twistlocks (SATLs) and above-deck cell guides would eliminate the need for workers to go atop containers for the purpose of coning or deconing. These engineering controls would greatly reduce the time spent on top of containers and thus, reduce the fall hazards. The use of such controls would also eliminate the need to use personal protective equipment (PPE) for the purposes of coning and deconing.

Kearney/Centaur conducted a time-motion study comparing the use of SATLs with the use of fall protection using tie-off. Through field visits to eight ports, Kearney/Centaur observed various container operations on different types of vessels. Activities that directly affect the total time to complete a project (activities on the critical path) were identified, and the average time to complete each of these activities was estimated. Operations that delay the crane are activities on the critical path. The study demonstrated that the use of SATLs would result in significant decreases in crane delay time, since workers would no longer need to be placed on each container to cone or decone. This finding is consistent with other studies conducted on the use of SATLs [1, Appendix E].

The unit cost of a SATL is about $20 more than the cost of a conventional twistlock. Thus, the incremental cost per SATL is estimated to be $20 [1]. An estimated 177 U.S.-owned vessels and 350 foreign-owned vessels will need to purchase SATLs. The total annualized investment cost to purchase SATLs is estimated at about $2 million for U.S. vessel operators and $4 million for foreign operators.

The use of SATLs is expected to result in cost savings to vessel operators, as well as to stevedores, in terms of productivity increases. The total dollar value of the cost savings depends on the time savings per vessel, the vessel configuration, the number of containers carried, the number of container cranes used to load or unload the vessel, and the number of trips made to U.S. ports. In each case, as analyzed in Kearney/Centaur's study, cost savings exceed the annualized cost of purchasing SATLs. Even under the worst case scenario, annual productivity increases more than offset the annualized investment cost of the SATLs.

The use of SATLs also results in reduced damage to containers. Conventional twistlocks are often thrown or dropped onto the tops of containers, often damaging them. Since SATLs are placed and removed on the dock, such damage would be avoided.

Furthermore, interviews with industry officials revealed that shipping lines are already rapidly converting to the use of SATLs. Approximately 47 to 55 percent of all containerships calling at U.S. ports are currently using SATLs. An estimated 22 to 26 percent of U.S. flag containerships and 74 to 78 percent of foreign flag containerships currently use SATLs. In addition, major shipping lines are currently in the process of fully converting to the use of SATLs [1].

In conclusion, based on the Kearney/Centaur study, the annual productivity gains realized as a result of using of SATLs are expected to exceed the annualized investment cost to purchase SATLs. OSHA requests additional data and comments on this issue.

Certification of Fall Protection Systems

The certification of fall protection systems used in container operations is also expected to result in compliance costs. The proposed rule would require that all fall protection systems be certified by a registered professional engineer as being capable of sustaining at least twice the potential impact of an employee's fall. Based on Kearney/Centaur interviews with industry officials, compliance with this provision would require, on average, one annual certification per establishment involved in container operations. Each certification is expected to take about two hours. Approximately 277 establishments are estimated to be involved in container operations [1]. The services of a registered professional engineer to conduct the required testing and provide certification are estimated to cost about $50 per hour, or $100 per establishment, annually. In addition, there may be a $200 documentation fee and a 15 percent administrative surcharge. This results in an average cost of $345 per establishment, and a total annual recurring cost of $95,565 for stevedoring firms.

Secondary Attachments for Safety Cages

The proposed standard requires the use of secondary attachments for safety cages attached to container gantry

cranes which are used to hoist employees. Few safety cages have secondary means of attachment. The installation of padeyes on cages to allow them to be attached to the spreader by chains and hooks would satisfy this requirement. Approximately 75 to 100 safety cages are currently in use, 90 percent of which lack secondary means of attachment [1]. Applying this percentage to 88 safety cages (the midpoint of the estimated range of safety cages in use) yields an estimate of 79 cages that will need to be retrofitted. The installation of padeyes is estimated to cost $200 per safety cage. No costs are attributed to the purchase of hooks and chains since these items are readily available from existing inventories of equipment. The total capital cost to comply with this provision is estimated at $15,840. This cost would is likely to be borne by stevedoring companies [1].

Marking of Load Capacities on RO-RO Ramps

The proposed provision requiring that RO-RO ramps be marked with their load capacities is expected to impose first-year costs primarily on vessel operators. Field visits and interviews with industry representatives indicated that virtually none of the vessels have load capacities marked on their ramps. The Bureau of the Census reported that 147 RO-RO vessels called at U.S. ports in 1992. Approximately 120 of these are RO-RO car carriers, and 27 are heavy capacity RO-RO vessels. On average, car carriers have about four ramps each and heavy capacity RO-RO vessels have 1.5 ramps each. Thus, an estimated 521 ramps would need to be marked. Industry officials indicated that this procedure would require about 0.5 hour per vessel to obtain the necessary information, and 0.5 hour to mark each ramp. Thus, a total of 334 labor hours would be required. Using a labor rate of $40.30, the total estimated first-year cost for vessel operators to comply with this requirement is $13,460.

Separation of Vehicles and Pedestrians on RO-RO Ramps

The proposed rule also requires that pedestrians and vehicles be physically separated on RO-RO ramps. When no physical separation is present or feasible, a signal person would be required to direct traffic, disallowing concurrent use. Although some heavy capacity RO-RO ramps have pedestrian walkways built into them, most are relatively wide and are often used concurrently by pedestrians and vehicles.

For car carriers, ramps are narrow and many do not have room to designate both a pedestrian walkway and a car lane. Discussions with car carrier foremen indicated that, currently, a gang member is assigned the duty of directing traffic and coordinating the movement of vehicles. Consequently, no incremental costs are expected to be incurred for a signal person. However, decreases in productivity may result since vehicles, which would normally be driven onto ramps when pedestrians are present, would have to wait until all pedestrians clear the ramp.

Kearney/Centaur indicated that productivity decreases would be in the form of additional personnel rather than vessel delays. Based on the number of vehicles imported to and exported from the United States each year, the probability that pedestrians and vehicles would concurrently use a ramp, and the average delay time that would result for each incident, Kearney/Centaur estimated that this proposed requirement would result in a total annual delay time of about 2,178.7 hours [1]. Applying an average longshore worker wage rate of $40.30 to the total time delay yields a recurring annual cost of about $87,801.

Marking Flat Bed and Low Boy Trailers

The proposed rule requires that flat bed and low boy trailers (mafis) be marked with their load capacities. Kearney/Centaur concluded that the 307 establishments involved in container and RO-RO operations will be affected by this requirement, 80 percent of which are already in compliance [1]. To mark all mafis would take about eight hours per establishment. Using an average hourly wage rate of $40.30, the first-year incremental cost of this requirement is estimated at $19,795.

High Visibility Vests

The proposed rule would require that high visibility vests be used during RO-RO and container operations. Kearney/Centaur estimated that one vest would be required, annually, for each affected worker [1]. OSHA estimates that about 75 percent (40,963 workers) of SIC 4491 workers are involved in container or RO-RO operations. The average unit cost of a high visibility vest is estimated to be $6.50 [1]. Therefore, the annual recurring cost for high visibility vests is estimated at $266,260.

Additional Training in Container and RO-RO Safety

Since there are several revisions proposed for container and RO-RO operations, additional training is expected to be needed. OSHA estimates that 75 percent of longshore workers employed in SIC 4491 (40,963 workers) engage in either container or RO-RO operations or both. Assuming one supervisor will need to be trained for every 10 workers at risk, 4,096 supervisors will need additional training. Additional training in container and RO-RO operations is not expected to exceed 0.5 hour [1]. Applying an hourly supervisor wage rate of $50.78 yields a first-year cost of approximately $103,997.

A first-year cost to provide safety instruction is also estimated. An estimated 307 establishments will need instructors for container and RO-RO safety training [1]. Using an hourly instruction fee of $175 per hour of training provided, the estimated instruction cost is $26,863.

The total first-year cost for additional container and RO-RO safety training is estimated to be $130,860, and will most likely be borne by stevedoring firms.

Subpart I: General Working Conditions

Illumination

According to industry officials, most lighting situations meet the proposed requirement of 5 footcandles (54 lux) of illumination. The existing rule requires that "adequate" lighting be provided at all times. OSHA assumes that establishments not using at least 5 footcandles (54 lux) of lighting would be in violation of the existing rule. Thus, no incremental costs are estimated for this provision.

Sanitation

The proposed standard includes specifications on the number of toilets that would need to be available to longshore workers. Kearney/Centaur interviews with industry representatives indicated that current practice already meets this proposed requirement, with the exception of certain situations in the Gulf region. Compliance with this requirement can be achieved through semi-monthly rentals of portable toilets at a rental cost of $65 each. The total recurring annual cost to comply with the proposed sanitation requirements is estimated to be $1,560 for stevedoring companies operating in the Gulf [1].

First Aid Kits

The proposed rule would require that first aid kits be checked at least weekly and that contents be approved by a physician. Industry officials indicated that first aid kits currently in use are stocked on the basis of recommendations by first aid and safety professionals and are expected to already meet physicians' recommendations. Thus, kit contents are not expected to change as a result of proposed revisions.Incremental costs are expected to result in the form of labor time necessary to perform weekly checks of the contents of each kit. This

procedure is not expected to take more than 5 minutes per week per establishment. Applying an average hourly wage rate of $40.30 yields an annual cost of $174.63 per establishment per year. The total recurring annual cost for all 3,700 establishments to comply with this requirement is estimated at $646,143.

Stretchers

Incremental costs are expected to result from the proposed requirement that stretchers be equipped with four sets of working patient restraints. Costs are estimated assuming that 25 percent of the affected workplaces would need to retrofit their stretchers. Approximately one stretcher per establishment would need to be retrofitted at an average cost of $400 each [1]. The total capital cost for this requirement is estimated at $370,000.

Accident Prevention Proficiency Training for Supervisors

The proposed rule would require that all supervisors overseeing more than five workers complete a course in accident prevention. This training is currently required under the Marine Terminals standard. Kearney/Centaur field visits indicated that approximately 75 percent of supervisors already receive accident prevention training [1]. Each course is estimated to take two hours. At an average supervisor wage rate of $50.78 per hour, the cost for 2,336 supervisors to receive this training is $237,244. The average fee to provide instruction is estimated to be $175 per hour of training. Assuming that 25 percent of the affected establishments (925 establishments) would require such training, the cost for instruction is estimated at $323,750 ($175 x 2 x 925). The total first-year cost for accident prevention proficiency training is, therefore, estimated to be $560,994 and is expected to be borne by stevedoring companies.

In addition to first-year costs, annual recurring costs are expected to be incurred as a result of supervisor turnover. Kearney/Centaur estimated that the turnover rate for longshore supervisors is about five percent per year. The resulting annual cost of supervisor time is estimated at $11,883. The annual cost to provide instruction is $16,188, assuming that five percent of establishments would need such instruction. The recurring annual cost for accident prevention proficiency training is, therefore, estimated at $28,070.

Subpart J: Personal Protective Equipment

The proposed rule would broaden the existing scope to require that personal flotation devices be used in more situations where workers may be at risk of falling into the water. Since the existing rule already requires the use of personal flotation devices in the Gulf/Mississippi region, no incremental costs in addition to general training costs are expected to be incurred by establishments in this region. To estimate the number of flotation devices that would be needed, OSHA assumes that 50 percent of employees not working in the Gulf/Mississippi region (19,386 workers), would need personal flotation devices. The average unit cost per life vest meeting the required specifications is estimated at $55 [8]. Thus, the total capital cost to purchase personal flotation devices is estimated at $1,066,230.

Summary

As shown in Table C–2, the total first-year cost of the proposed revisions to the Longshoring standard is estimated at $4,088,445. After the first year, establishments will incur an estimated $1,755,773, annually.

Table C-2—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1918 (Longshoring) (1993 Dollars)

Source	First-Year Costs	Capital Costs	Annualized Capital Costs*	Recurring Annual Costs	Total First-Year Costs	Total Annualized Costs
Workplace Analysis	485,625				485,625	
General Training						
Supervisor Time	474,438				474,438	
Instruction	647,500				647,500	
Subpart C						
6″ sideboards: dockboards/ramps		1,070,000	174,138		174,138	174,138
Subpart G						
4-yr. testing of special gear				37,580	37,580	37,580
Lockout/tagout: powered conveyors		18,900	3,076		3,076	3,076
Subpart H						
Vertical lifts		1,101,492	179,263		179,263	179,263
Certification: fall protection				95,565	95,565	95,565
Secondary safety cage attachments		15,840	2,578		2,578	2,578
Marking RO-RO ramps	13,460				13,460	
Separation of vehicles/pedestrians on RO-RO ramps				87,801	87,801	87,801
Marking flat bed/low boy trailers	19,795				19,795	
High visibility vests				266,260	266,260	266,260
Training						
Supervisor Time	103,997				103,997	
Instructor	26,863				26,863	
Subpart I						
Sanitation				1,560	1,560	1,560
First aid kits				646,143	646,143	646,143
Stretchers		370,000	60,216		60,216	60,216
Accident prevention training	560,994			28,070	589,064	28,070
Subpart J						
Personal flotation devices		1,066,230	173,524		173,524	173,524

Table C-2—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1918 (Longshoring) (1993 Dollars)—Continued

Source	First-Year Costs	Capital Costs	Annualized Capital Costs*	Recurring Annual Costs	Total First-Year Costs	Total Annualized Costs
TOTAL	$2,332,672	$3,642,462	$592,794	$1,162,979	$4,088,445	$1,755,773

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur [1, Chapter 4].
* Annualized over 10 years using a 10% interest rate.

Revisions to 29 CFR Part 1917: Marine Terminals

Several of the proposed revisions to the Marine Terminals standard are not expected to generate any specific costs. Some of the costs of the proposed revisions are included in the cost analysis of the proposed Longshoring standard. For example, the first aid kits and stretchers used for workers aboard vessels are the same ones used in marine terminals. Also, Kearney/Centaur concluded, based on interviews with industry representatives, that many of the proposed requirements reflect current practices. For example, current industry practice prohibits riding the load and hoisting workers by hooks. In addition, industry officials indicated that lowering the 8-hour time-weighted average exposure limit of carbon monoxide from 50 ppm to 35 ppm would not be a problem.

Compliance with most of the proposed revisions to the Marine Terminals standard can be met through workplace analysis and general training. Specific compliance costs are expected to be generated from the proposed requirement for seat belts in high speed container gantry cranes.

First-Year Costs

Costs for workplace analysis and general training are based on the assumption that 1,928 establishments and 70,140 workers (see Industry Profile), would be affected by proposed revisions to the Marine Terminals standard [1]. The total first-year cost for these activities is estimated at $515,485.

Workplace Analysis

Approximately one hour, on average, is estimated to be required for a safety consultant, familiar with the proposed rule, to evaluate an establishment. At an average fee of $87.50 per hour, the total estimated first-year cost for workplace analysis is $168,700 [1].

General Training

One supervisor per every 10 workers (7,014 supervisors) would receive supplementary general training in the proposed new requirements. General training in the proposed requirements is estimated to take about 0.5 hour. Using an average supervisor wage rate of $50.78, the total first-year cost of supervisor time for additional training is estimated at $178,085. The cost per establishment to provide instruction, using an average fee of $175 per hour of training, is estimated at $168,700.

Thus, the total first-year cost of general training is estimated at $346,785, and will most likely be borne by stevedoring firms.

Seat Belts

The proposed rule requires that seat belts be placed in the operators' seats of high-speed container gantry cranes. Kearney/Centaur estimated that 40 percent of the 411 container gantry cranes in U.S. ports are already equipped with chest harnesses. Based on interviews, the cost to retrofit one crane is estimated at $500. The total capital cost to retrofit 247 container cranes is estimated to be $123,500.

Summary

Proposed revisions to the Marine Terminals standard are estimated to result in first-year costs totalling $535,585 and annualized costs totalling $20,099 (Table C–3).

Table C-3—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1917 (Marine Terminals) (1993 Dollars)

	First-Year Cost	Capital Cost	Annualized Capital Cost*	Total First-Year Cost	Total Annualized Cost
Workplace Analysis	168,700			168,700	
General Training					
Supervisor Time	178,085			178,085	
Instructor	168,700			168,700	
Seatbelts		123,500	20,099	20,099	20,099
TOTAL	$515,485	$123,500	$20,099	$535,585	$20,099

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur [1, Chapter 4].
* Annualized over 10 years using a 10% interest rate.

D. Benefits

Introduction

The proposed revisions to the Longshoring and Marine Terminals standards are expected to reduce the numbers of injuries and fatalities in the marine cargo handling industry. Since affected workers are involved in both off-the-dock (covered under 29 CFR part 1918) and on-the-dock activities (covered under 29 CFR part 1917), separate analyses are presented on accidents that occur in each area of operation.

Injuries and Fatalities

As presented in the Industry Profile, approximately 87,951 full-time equivalent (FTE) longshore workers, based on a 1,436 hour work-year, are affected by the Longshoring standard. Approximately 67,974 of these workers are also covered by the Marine Terminals standard. About 54,617 of affected workers are employed in SIC 4491, while the others are employed in establishments classified under other industry sectors. A summary of injuries occurring among affected workers in the marine cargo handling industry is shown in Table D-1. As shown, a total of 18 fatalities and 7,593 injuries occurred among workers affected by the Longshoring and Marine Terminals standards.

Table D-1—Estimated Annual Number of Fatalities and Injuries Occurring Among Affected Workers

Type of Incident	Total Cases	Off-the-Dock	On-the-Dock
Fatalities	18	10	8
Injuries	7,593	4,208	3,385
Non-Lost Workday Cases	2,903	1,609	1,294
Lost Workday Cases	4,690	2,599	2,091
Lost Workdays	182,442	101,109	81,332

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 5].

Injuries

The Bureau of Labor Statistics (BLS) provided the 1991 injury rate for SIC 4491. This rate was 13.6 for every 100 FTE workers, based on a 2000 hour work-year [1]. The lost workday and non-lost workday injury rates per 100 FTE workers were 8.4 and 5.2, respectively. An average of 38.9 lost workdays occurred per lost workday injury.

BLS also conducted a study of longshore-related injuries processed under the Federal Longshoremen's and Harbor Workers' Compensation Act [9]. According to this study, 49 percent of longshore-related injuries occurred off the dock, while 51 percent occurred on the dock.

Since BLS injury rates are per 100 FTE workers based on a 2,000 hour work-year, the number of FTE workers based on a 1,436 hour work-year must be converted to FTEs based on a 2,000-hour work-year. The conversion results in 63,148 FTE off-the-dock workers and 48,805 FTE on-the-dock workers.

Off-the-Dock

The number of off-the-dock injuries was estimated by applying 49 percent of the BLS injury rate to the 63,148 FTE off-the-dock workers (based on a 2,000 hour work-year). As a result, 4,208 annual injuries are estimated to occur off the dock. Of these, 2,599 are lost workday cases resulting in 101,109 lost workdays, and 1,609 are non-lost workday cases.

On-the-Dock

The number of FTE workers affected by the Marine Terminals standard, based on a 2,000 hour work-year, is 48,805. Applying 51 percent of the BLS injury rate to the 48,805 FTE workers on the dock yields 3,385 annual injuries occurring on the dock. Of these, 1,294 are non-lost workday cases and 2,091 are lost workday cases resulting in 81,332 lost workdays.

Fatalities

Although BLS did not provide a fatality rate for SIC 4491, data were available on the total of number of 1992 fatalities that occurred in SIC 4491. BLS indicated that 13 fatalities occurred among SIC 4491 workers [1]. Since 54,617 FTE workers (based on a 1,436 hour work-year) are estimated to be employed in SIC 4491, a fatality rate of 0.0238 per 100 FTE workers (based on a 1,436 hour work-year) was derived.

Off-the-Dock

To determine the number of off-the-dock fatalities occurring annually, 49 percent of the fatality rate was applied to the 87,951 FTE longshore workers (based on a 1,436 hour work-year). This results in 10 fatalities occurring, annually, off the dock.

On-the-Dock

To estimate the number of fatalities occurring among the population covered by the Marine Terminals standard, OSHA used 51 percent of the fatality rate estimated above. As a result, approximately eight fatalities are estimated to occur on the dock, annually.

BENEFITS

The proposed revisions to the Longshoring and Marine Terminals standards are expected to reduce many of the risks involved in marine cargo handling operations. Reductions in fatalities and injuries are expected as a result of proposed revisions to the two standards.

In reviewing OSHA's first reports of serious accidents in the marine cargo handling industry, Kearney/Centaur estimated the percent of fatalities that would have been prevented by proposed revisions to the existing standards. Approximately 30 percent of off-the-dock fatalities and injuries could have been prevented through compliance with proposed requirements. Thus, an estimated 3 fatalities are expected to be prevented, annually, by the proposed requirements. In addition, an estimated 1,262 injuries would be prevented annually through compliance with proposed new requirements. Many additional fatalities and injuries would be prevented through full compliance with existing requirements retained in the proposed standards.

Summary of Benefits

All of the proposed revisions to the Longshoring and Marine Terminals standards are likely to reduce the risk of injuries occurring in the marine cargo handling industry. The proposed new requirements are expected to prevent approximately 3 of the 18 fatalities and 1,262 of the 7,593 injuries occurring annually among affected workers. Approximately 779 lost workday injuries involving 30,303 lost workdays are expected to be prevented, annually. An additional 483 non-lost workday cases are also expected to be avoided. Many additional fatalities and injuries would likely be prevented through full compliance with existing requirements retained in the proposed standards.

E. Economic Impacts

Compliance with the requirements of the proposed revisions to the Longshoring and Marine Terminals standards are not expected to produce any significant adverse economic impacts.The costs that are imposed by the regulation should be a minimal burden on all affected establishments.

The total annual revenues and profits associated with longshoring operations are approximately $7.8 billion and $388.9 million, respectively [1]. The total estimated costs of compliance with the proposed revisions to the Longshoring and Marine Terminals standards rules are less than $4.7 million for the first year after promulgation of the final rules and less than $1.8 million annually, thereafter. Thus, the total first-year costs of compliance with the proposed revisions represent less than 0.06 percent of the revenues and 1.19 percent of the profits of the industry. Compliance costs for subsequent years represent less than 0.03 percent of revenues and less than 0.46 percent of profits.

Current practices in the marine cargo handling industry indicate that the requirements of the proposed standard can generally be met without significant hardship. Many employers already comply with the proposed requirements and presumably are not imposing substantial disadvantages on themselves.

Since stevedoring establishments engaging in similar cargo handling operations in the United States would be subject to the same regulations, no competitive disadvantages between industries or with regard to international trade are projected. Costs are expected to be passed through as an increase in the costs of cargo handling and shipping, and the effect on profits and prices should be negligible. The estimated compliance costs would represent an average increase in cost of less than 25 cents for shipping a loaded container in or out of U.S. ports, which costs an average of about $3000. On the whole, the costs of marine cargo handling operations for society would actually decrease as fewer accidents would mean less lost time and wages and fewer medical and legal resources

necessary for a given amount of cargo shipping and handling.

The estimated savings to society attributable to the prevention of injuries and fatalities would far outweigh the costs of preventing these incidents. According to the National Safety Council, the total costs associated with occupational injuries and deaths in 1992 were $115.9 billion, or an average cost of over $15,000 per case. This estimate includes wage and productivity losses, medical costs, administrative expenses, and other costs associated with accidents. The estimated benefits anticipated from proposed requirements include unquantifiable reductions in pain and suffering, plus estimated savings of over $18 million annually.

REGULATORY FLEXIBILITY ANALYSIS

Pursuant to the Regulatory Flexibility Act (P.L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA has made an assessment of the impact of the proposed revisions to the Longshoring and Marine Terminals standards, and has concluded that they would not have a significant impact upon a substantial number of small entities.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standards would impose significant costs upon small entities. "Significance" is determined by the effect upon profits, market share, and the entity's financial viability. In particular, the effect of the proposed revisions upon small entities relative to their effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposed requirements would have a relatively greater negative effect upon small entities than they would have upon large entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing the risk to employees.

If the costs of compliance are proportional to firm size and are insignificant to small firms, then there is no significant differential burden on small firms relative to that on large firms. In those cases involving large absolute costs (typically capital equipment costs), financing may be more difficult to obtain for small entities than for larger entities and in such cases of economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The proposed changes to the Longshoring and Marine Terminals standards, however, require minimal capital expenditures and generally impose costs that are proportional to firm size and the amount of business done. In addition, these costs would be a minimal component of the overall costs of operations. As a result, small entities would not be put at a competitive disadvantage to large entities due to these compliance costs.

Thus, OSHA concluded that the proposed revisions to the Longshoring and Marine Terminals standards would not have a significant adverse impact upon a substantial number of small entities.

F. Other Impacts

Impact Upon International Trade

OSHA determined that compliance with the proposed revisions to the Longshoring and Marine Terminals standards would not have any measurable impact upon international trade. The compliance costs are minimal and are not expected to affect exports, imports, or international competitiveness. To the extent that compliance with the proposed rule would increase cargo handling efficiency and reduce the number of injuries and fatalities associated with these operations, shipping costs may be reduced and result in a general increase in the competitiveness of U.S. firms.

References

1. Kearney/Centaur, Division of A.T. Kearney, Inc., *Economic Assessment of OSHA's Proposed Longshoring Standard*, prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, Contract No. J–9–F–1–0015.

2. U.S. Department of Transportation, Maritime Administration, "The U.S. Stevedoring and Marine Terminal Industry," January 1993.

3. U.S. Department of Transportation, Maritime Administration, "Merchant Fleets of the World: Oceangoing Steam and Motor Ships of 1,000 Gross Tons and Over as of January 1, 1992."

4. U.S. Department of Transportation, Maritime Administration, "A Report to Congress on the Status of the United States 1990–1991," December 1992.

5. U.S. Department of Commerce, Bureau of the Census, Foreign Trade Division, computer printout on the number of vessels calling at U.S. ports in 1992, May 4, 1993.

6. U.S. Department of Transportation, Maritime Administration, "Inventory of American Intermodal Equipment 1990," April 1991.

7. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, County Business Patterns 1990—United States.

8. SAFECO, Inc. Occupational Health and Safety Products Supply Catalog.

9. U.S. Department of Labor, Bureau of Labor Statistics, "Injuries Involving Longshore Operations," Bulletin 2326, May 1989.

IX. Environmental Impact

The proposed revisions to the Longshoring and Marine Terminals standards have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL NEPA Procedures (29 CFR Part 11). No significant negative impact is foreseen on air, water or soil quality, plant or animal life, the use of land or sea, or other aspects of the environment.

X. Recordkeeping Requirements

Part 1320 of title 5 of the CFR sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed Longshoring standard requires the employer to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average five minutes per response to allow OSHA compliance officers access to the employer's records. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Information and Regulatory Affairs Management and Budget, Washington, D.C. 20503.

XI. State Plan Requirements

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage

of maritime activities in Federal OSHA states and in the following state Plan States: Alaska, Arizona, Connecticut[3], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York[4], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming (all states with state plans must also extend coverage to state and local government employees engaged in maritime activities.)

XII. Federalism

The standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear constitutional authority and the presence of a problem of national scope. Additionally, the Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on longshoring and marine terminal operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States which have elected to participate under section 18 of the OSHA Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

XIII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. Responses to the questions raised at various places in the proposal are particularly encouraged. These comments must be postmarked by September 30, 1994. Comments are to be submitted in quadruplicate or 1 original (hard-copy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0 or Ascii. Note: Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate to: The Docket Office, Docket No. S–025, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone No. (202) 219–7894.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSH Act, informal public hearings will be held on this proposal in:

Charleston, South Carolina on September 30, 1994.

Seattle, Washington on October 31, 1994.

New Orleans, Louisiana on November 29, 1994. Actual addresses for the locations of the regional hearings in Charleston, South Carolina, Seattle, Washington, and New Orleans, Louisiana will be announced in a later Federal Register notice.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by August 31, 1994. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. S–025, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–8615.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–5986, by the same date, provided the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Individuals with disabilities wishing to attend the hearings should contact the hearing management officer, Mr. Tom Hall, to obtain appropriate accommodations at the hearing.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than 21 days prior to the date of the hearing.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal hearing.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on the first day. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the

[3] Plan covers only state and local government employees.

[4] Plan covers only s ate and local government employees.

proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. It should be noted that §1911.4 specifies the Assistant Secretary may upon reasonable notice issue alternative procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witnesses and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of public response on the issues involved.

List of Subjects in 29 CFR parts 1910, 1917, and 1918

Cargo, Cargo gear certification, Intermodal container, Longshoring, Maritime, Marine terminal, Hazardous materials, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

XIV. Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911 and Secretary of Labor's Order No. 1–90 (55 FR 8033), OSHA proposes to amend 29 CFR parts 1910, 1917 and 1918 as set forth below.

Signed at Washington, D.C. this 12th day of May, 1994.

Joseph A. Dear,

Assistant Secretary of Labor

For the reasons set out in the preamble 29 CFR Chapter XVII would be amended as follows:

PART 1910—[AMENDED]

1. The authority for part 1910 would continue to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq; Service Contract Act of 1965, 41 U.S.C. 351 et seq; sec. 107, Contract Work Hours and Safety Standards Acts (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 1911, 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable.

2. Paragraphs (a) and (b) of §1910.16 would be revised to read as follows:

§1910.16 Longshoring and marine terminals.

(a) *Safety and health standards for longshoring.* (1) Part 1918 of this chapter shall apply exclusively, according to the provisions thereof, to all employment of every employee engaged in longshoring operations or related employment aboard any vessel. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by part 1917 of this chapter.

(2) Part 1910 does not apply to longshoring operations except for the following provisions:

(i) *Toxic and hazardous substances.* Subpart Z applies except that the requirements of subpart Z of this part do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

(ii) *Access to employee exposure and medical records.* Subpart C, §1910.20;

(iii) *Commercial diving operations.* Subpart T of this part;

(iv) *Electrical.* Subpart S of this part; when shorebased electrical installations provide power for use aboard vessels;

(v) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of this part;

(vi) *Hazard Communication.* Subpart Z, §1910.1200;

(vii) *Hazardous waste operations and emergency response.* Subpart H, §1910.120(q).

(viii) *Ionizing radiation.* Subpart G, §1910.96;

(ix) *Machinery and Machine Guarding.* Subpart O, §1910.211;

(x) *Noise.* Subpart G, §1910.95;

(xi) *Nonionizing radiation.* Subpart G, §1910.97; and

(xii) *Respiratory protection.* Subpart I, §1910.134.

(b) *Safety and health standards for Marine Terminals.* Part 1917 of this chapter shall apply exclusively, according to the provisions thereof, to employment within a marine terminal, except as follows:

(1) The provisions of part 1917 of this chapter do not apply to the following:

(i) Facilities used solely for the bulk storage, handling and transfer of flammable and combustible liquids and gases.

(ii) Facilities subject to the regulations of the Office of Pipeline Safety Regulation of the Materials Transportation Bureau, Department of

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

Transportation, to the extent such regulations apply to specific working conditions.

(iii) Fully automated bulk coal handling facilities contiguous to electrical power generating plants.

(2) Part 1910 does not apply to Marine Terminals except for the following:

(i) *Abrasive blasting.* Subpart G, §1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart C, §1910.20;

(iii) *Commercial diving operations.* Subpart T of this part;

(iv) The control of hazardous energy (lockout/tagout). Subpart J, §1910.147;

(v) *Electrical.* Subpart S of this part;

(vi) *Grain handling facilities.* Subpart R, §1910.272;

(vii) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of this part;

(viii) *Hazard Communication.* Subpart Z, §1910.1200;

(ix) *Machinery and Machine Guarding.* Subpart O;

(x) *Noise.* Subpart G, §1910.95;

(xi) *Respiratory protection.* Subpart I, §1910.143;

(xii) *Safety requirements for scaffolding.* Subpart D, §1910.28;

(xiii) *Servicing multi-piece and single piece rim wheels.* Subpart N, §1910.177; and

(xiv) *Toxic and hazardous substances.* Subpart Z applies except that the requirements of Subpart Z of this part do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

BILLING CODE 4510-26-F

PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 would continue to read as follows:

Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs.4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Subpart A—Scope and Definitions

2. In § 1917.1, the introductory text of (a) and paragraphs (a)(2)(i) through (a)(2)(x) are proposed to be revised and paragraphs (a)(2)(xi) through (a)(2)(xvii) are proposed to be added to read as follows:

§ 1917.1 Scope and applicability.

(a) The regulations of this part apply to employment within a marine terminal as defined in § 1917.2(u), including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by this part.

* * * * *

(2) * * *

(i) *Abrasive blasting.* Subpart G, § 1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart C, § 1910.20;

(iii) *Commercial diving operations.* Subpart T of part 1910;

(iv) *The control of hazardous energy (lockout/tagout).* Subpart J, § 1910.147;

(v) *Electrical.* Subpart S of part 1910;

(vi) *Grain handling facilities.* Subpart R, § 1910.272;

(vii) *Hand and portable powered tools and other hand-held equipment.* Subpart P of part 1910;

(viii) *Hazard communication.* Subpart Z, § 1910.1200;

(ix) *Hazardous waste operations and emergency response.* Subpart H, § 1910.120(q);

(x) *Ionizing radiation.* Subpart G, § 1910.96;

(xi) *Machinery and machine guarding.* Subpart O of part 1910;

(xii) *Noise.* Subpart G, § 1910.95;

(xiii) *Nonionizing radiation.* Subpart G, § 1910.97;

(xiv) *Respiratory protection.* Subpart I, § 1910.143;

(xv) *Safety requirements for scaffolding.* Subpart D, § 1910.28;

(xvi) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177; and

(xvii) *Toxic and hazardous substances.* Subpart Z of part 1910 applies, except that the requirements of subpart Z of part 1910 do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1] Notwithstanding the rules for Hazard Communication (§ 1910.1200) shall apply.

3. In § 1917.2, the paragraph designations to each definition are proposed to be removed and the definitions placed in alphabetical order, definitions for the terms *Employee* and *Employer* are proposed to be added, and the definition for the term *Intermodal container* is proposed to be revised to read as follows:

§ 1917.2 Definitions.

* * * * *

Employee means any longshore worker, or other person engaged in marine terminal operations or related employments.

Employer means an employer any of whose employees are employed, in whole or in part, in marine terminal operations.

* * * * *

Intermodal container means a reusable cargo container of rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

* * * * *

Subpart B—Marine Terminal Operations

4. Section 1917.11 is proposed to be amended by adding paragraph (d) to read as follows:

§ 1917.11 Housekeeping.

* * * * *

(d) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the immediate work area or if left in the area, the nails shall be rendered harmless.

5. Section 1917.13 is proposed to be amended by revising paragraph (g) and adding paragraphs (h) and (i) to read as follows:

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

§ 1917.13 Slinging.

* * * * *

(g) Intermodal containers shall be handled in accordance with § 1917.71(f).

(h) The employer shall require employees to stay clear of the area beneath overhead drafts or descending lifting gear.

(i) Employees shall not be permitted to ride the hook or the load.

6. Section 1917.17 is proposed to be amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 1917.17 Railroad facilities.

* * * * *

(i) If powered industrial trucks are used to open railcar doors, the trucks or the railcar doors shall be equipped with door opening attachments. Employees shall stand clear of the railcar doors while they are being opened and closed.

(j) Only railcar door openers or powered trucks equipped with door opening attachments shall be used to open jammed doors.

(k) Employees shall not remain in or on gondolas or flat cars when drafts that create overhead, caught-in, caught-between or struck-by hazards are being landed in or on the railcar; end gates, if raised, shall be secured.

* * * * *

7. Section 1917.18 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1917.18 Log handling.

(a) Structures (bunks) used to contain logs shall have rounded corners and rounded structural parts to avoid sling damage.

* * * * *

8. Section 1917.20 is proposed to be revised to read as follows:

§ 1917.20 Interference with communications.

Cargo handling operations shall not be carried on when noise-producing maintenance, construction or repair work interferes with the communication of warnings or instructions.

9. Section 1917.23 is proposed to be amended by revising paragraphs (b)(1) and (d) introductory text to read as follows:

§ 1917.23 Hazardous atmospheres and substances.

(See § 1917.2(r))

* * * * *

(b) *Determination of hazard.* (1) When the employer is aware that a room, building, vehicle, railcar, or other space contains or has contained a hazardous atmosphere, a designated and appropriately equipped person shall test the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

* * * * *

(d) *Entry into hazardous atmospheres.* Only designated persons shall enter hazardous atmospheres, in which case the following provisions shall apply:

* * * * *

10. Section 1917.24 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 1917.24 Carbon monoxide.

(a) *Exposure limits.* The carbon monoxide content of the atmosphere in a room, building, vehicle, railcar, or any enclosed space shall be maintained at not more than 35 parts per million (ppm) (0.0035%) as an 8-hour timeweighted average and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 ppm (0.01%). The short term exposure limit in outdoors, non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

* * * * *

(d) *Records.* A record of the data time, location and results of carbon monoxide tests shall be available for at least 30 days. Such records may be entered on any retrievable medium and shall be available for inspection.

* * * * *

11. Section 1917.25 is proposed to be amended by revising paragraphs (a) and (c) and adding paragraph (g) to read as follows:

§ 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives.

(See § 1917.2(p))

(a) At any time the hold concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturers or by Table Z–1 of 29 CFR 1910.1000, whichever is lower, all employees shall be removed from such holds or compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is safe.

* * * * *

(c) Results of any tests shall be available for at least 30 days. Such records may be entered on any retrievable medium, and shall be available for inspection.

* * * * *

(g) In the case of containerized shipments of fumigated tobacco, the contents of the container shall be aerated by opening the container doors for a period of 48 hours after the completion of fumigation and prior to loading. When tobacco is within shipping cases having polyethylene or similar bag liners, the aeration period shall be 72 hours. The employer shall obtain a written warranty from the fumigation facility stating that the appropriate aeration period has been met.

* * * * *

12. Section 1917.26 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 1917.26 First aid and lifesaving facilities.

* * * * *

(c) *First aid kit.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a physician and such contents shall be checked at least weekly. Expended items shall be promptly replaced.

(d) *Stretchers.* (1) There shall be available for each vessel being worked, one Stokes basket stretcher, or its equivalent, permanently equipped with bridles for attaching to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five, and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured with no burrs. Damaged stretchers shall not be used until repaired.

(7) Stretchers in permanent locations shall be mounted to prevent damage and protected from the elements if located out-of-doors. If concealed from view, closures shall be marked to indicate life saving equipment.

* * * * *

13. Section 1917.27 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1917.27 Personnel.

(a) * * *

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments which may suddenly incapacitate the employee shall be permitted to operate a crane, winch or other power-operated

cargo handling apparatus or a power-operated vehicle.

* * * * *

14. Section 1917.28 is proposed to be amended by removing the regulatory text and revising the section heading to read as follows:

§ 1917.28 Hazard Communication.

(See § 1917.1(a)(2)(viii)).

Subpart C—Cargo Handling Gear and Equipment

15. Section 1917.42 is proposed to be amended by revising paragraphs (b)(4), (c)(1), (d), (h)(4), (h)(5), and (j) to read as follows:

§ 1917.42 Miscellaneous auxiliary gear.

* * * * *

(b) * * *

(4) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be made available for inspection. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table C–1 shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

* * * * *

(c) * * *

(1) The employer shall ascertain the manufacturer's ratings for the specific natural fibre rope used and have such ratings available for inspection. The manufacturer's ratings shall be adhered to and a minimum design safety factor of five maintained.

* * * * *

(d) *Synthetic rope.*

(1) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fibre rope used and shall make such ratings available for inspection.

(2) Unless otherwise recommended by the manufacturer, when synthetic fibre ropes substituted for fibre ropes of less than 3 inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for manila rope of 3 inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{0.6C_s^2 + 0.4C_m^2}$$

Where C= the required circumference of the synthetic rope in inches, C_s= the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size fibre rope that would be required by paragraph (c) of this section and C_m= the circumference of fibre rope in inches which would be required by paragraph (c) of this section. In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fibre are suitable for hoisting.

* * * * *

(h) * * *

(4) Chains shall be repaired only under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(iii) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding 6 months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

* * * * *

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. After October 3, 1983, hooks other than hand hooks shall be tested in accordance with § 1917.50(c)(6).

* * * * *

16. Section 1917.43 is proposed to be amended by revising paragraph (e)(1)(i) to read as follows:

§ 1917.43 Powered industrial trucks.

* * * * *

(e) *Fork lift trucks.* (1) *Overhead guards.* (i) When operators are exposed to overhead falling hazards, fork lift trucks shall be equipped with securely attached overhead guards. Guards shall be constructed to protect the operator from falling boxes, cartons, packages, or similar objects.

* * * * *

17. Section 1917.44 is proposed to be amended by revising paragraphs (a), (i), (o)(3)(i), (o)(3)(ii), and (o)(4) to read as follows:

§ 1917.44 General rules applicable to vehicles.[4]

(a) The requirements of this section apply to general vehicle use within Marine Terminals except in cases where the provisions of paragraphs (c) and (l) of this section are preempted by applicable regulations of the Department of Transportation.[5]

* * * * *

(i) A distance of not less than 20 feet (6.1 m) shall be maintained between the first two vehicles in a check-in, check-out, roadability, or vessel loading/discharging line. This distance shall be maintained between any subsequent vehicles behind which employees are required to work.

* * * * *

(o) * * *

(3) * * *

(i) Only employees trained in the procedures required in paragraph (o)(4) of this section and who have demonstrated their ability to service multi-piece rim wheels shall be assigned such duties.

(ii) Employees assigned such duties shall have demonstrated their ability by the safe performance of the following tasks:

(4) *Servicing procedures.* The following procedures shall be followed:

* * * * *

18. Section 1917.45 is proposed to be amended by revising the section heading, paragraphs (f)(4)(iii), (f)(5), (f)(7), (f)(13)(ii), (i)(5)(i) introductory text, (j)(1)(iii)(D), (j)(2), and by adding paragraph (j)(9) to read as follows:

§ 1917.45 Cranes and derricks.

(See also § 1917.50.)

* * * * *

(f) * * *

(4) * * *

(iii) Stairways on cranes shall be equipped with rigid handrails meeting the requirements of § 1917.112(e).

* * * * *

(5) *Operator's station.* (i) The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(ii) [Insert date 90 days after publication of the Final Rule] A seat (lap) belt, meeting the requirements of

[4] The United States Coast Guard at 33 CFR 126.15 (d) and (e) has additional regulations applicable to vehicles in terminals.

[5] Department of Transportation regulations in 49 CFR part 393, Subpart C-Brakes, address the immobilization of trailer road wheels prior to disconnection of the trailer and until braking is again provided. Section 49 CFR 393.84 addresses the condition of flooring. These DOT rules apply when the motor carrier is engaged in interstate commerce or in the transport of certain hazardous items wholly within a municipality or the commercial zone thereof.

49 CFR 571.208–210 for a Type 1 seat belt assembly, shall be installed on the operator's seat of high speed container gantry cranes where the seat trolleys.

* * * * *

(7) *Outriggers.* Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

* * * * *

(13) * * *

(ii) Each independent hoisting unit of a crane, except worm geared hoists, the angle of whose worm is such as to prevent the load from accelerating in the lowering direction, shall, in addition to a holding brake, be equipped with a controlled braking means to control lowering speeds.

* * * * *

(i) * * *

(5) *Operating near electric power lines.* (i) *Clearance.* Unless electrical distribution and transmission lines are de-energized and visibly grounded at point of work, or unless insulating barriers not apart of on an attachment to this crane have been erected to prevent physical contact with lines, near cranes may be operated near power lines only in accordance with the following:

* * * * *

(j) * * *

(1) * * *

(iii) * * *

(D) Equipped with a device to prevent access doors, when used, from opening accidently;

* * * * *

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

* * * * *

(9) Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

* * * * *

19. Section 1917.48 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 1917.48 Conveyors.

* * * * *

(d) * * *

(2) Conveyors using electrically released breaks shall be constructed so that the breaks cannot be released until power is applied, and that the brakes are automatically engaged if the power fails or the operating control is returned to the "stop" position.

* * * * *

20. Section 1917.50 is proposed to be amended by revising paragraphs (c)(5) and (i) and adding paragraph (j) to read as follows:

§ 1917.50 Certification of marine terminal material handling devices.

* * * * *

(c) * * *

(5) *Special gear.* (i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, that has been purchased or fabricated after [Insert date 90 days after publication of Final Rule], and has a Safe Working Load (SWL) greater than 5 short tons (10,000 lbs. or 4540 kg.), shall be inspected and tested as a unit in accordance with the following table before initially being put into use:

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess.
Over 20 to 50 short tons (18.1 to 45.3 metric tons).	5 short tons in excess.
Over 50 short tons (45.3 metric tons).	10 percent in excess.

(ii) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, with a SWL of 5 short tons (10,000 lbs. or 4540 kg.) or less shall be inspected and tested as a unit in accordance with this section or by a designated person, in accordance with the table in § 1917.50(c)(5)(i) before initially being put into use.

(iii) Every spreader not a part of ship's gear and used for hoisting intermodal containers that has been purchased or fabricated after [Insert date 90 days after publication of Final Rule], shall be inspected and tested to a proof load equal to 25 percent in excess of its rated capacity before being put into use. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(iv) All cargo handling gear covered by this section with a SWL greater than 5 short tons (10,000 lbs. or 4540 kg.) shall be proof load tested according to the chart in paragraph (c)(5)(i) of this section every 4 years in accordance with paragraph (b) of this section or by a designated person.

* * * * *

(i) *Safe working load.* (1) The safe working load of gear as specified in § 1917.50 shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than 5 short tons (10,000 lbs. or 4540 kg.) shall have its safe working load plainly marked on it.

(j) The certification requirements of this section do not apply to the following equipment:

(1) Industrial trucks and small industrial crane trucks; and

(2) Any straddle truck not capable of straddling two or more intermodal containers 16 feet (4.8 m) in width.

* * * * *

21. § 1917.51 is proposed to be amended by removing the regulatory text and revising the section heading to read as follows:

§ 1917.51 Hand tools.

(See subpart P of 29 CFR part 1910.)

22. Section 1917.71 is proposed to be amended by revising paragraphs (b)(6), (b)(7), (c), (e), (f)(1)(i) and adding paragraphs (b)(8), (f)(4) and (f)(5) to read as follows:

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

* * * * *

(b) * * *

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section provided that:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside in such a manner that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing or by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the purpose of the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is located.

(c) No container or containers shall be hoisted if its actual gross weight exceeds the weight marked as required in paragraph (a)(2) of this section, or if it exceeds the capacity of the crane or other hoisting device intended to be used.

* * * * *

(e) Employees working in the immediate area of container handling equipment or in the terminal's traffic lanes shall wear high visibility vests (or equivalent protection).

(f) * * *

(1) * * *

(i) When hoisting by the top fittings, the lifting forces shall be applied vertically from at least four (4) such fittings.

* * * * *

(4) Flat bed and low boy trailers (mafis) shall be marked with their cargo capacities and shall not be overloaded.

(5) Air brake connections. Tractors shall connect all brake air lines when pulling trailers equipped with air brakes.

* * * * *

23. Section 1917.73 is proposed to be amended by revising the section heading and paragraph (a)(2) to read as follows:

§ 1917.73 Terminal facilities handling menhaden and similar species of fish.

(See § 1917.2(p).)

(a) * * *

(2) Before employees enter a dock tank, it shall first be drained, rinsed and tested for hydrogen sulfide and oxygen deficiency. The hydrogen sulfide content of the atmosphere in a dock tank, compartment, or any enclosed space shall be maintained at not more than 10 parts per million (ppm) (0.0010%) as an 8-hour time weighted average. The short term exposure limit shall be 15 ppm (0.0015%) measured over a 15 minute period. The oxygen level must be maintained to at least 19.5 percent.

* * * * *

24. Section 1917.91 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1917.91 Eye protection.

(a)(1) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment marked or labeled as meeting the manufacturing specifications of American National Standards, Practice for Occupational and Educational Eye and Face Protection, ANSI Z–87.1–1989 and shall require that it be used.

* * * * *

25. Section 1917.93 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1917.93 Head protection.

* * * * *

(b) Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standards, Requirements for Protective Headwear for Industrial Workers, ANSI Z–89.1–1986.

* * * * *

26. Section 1917.94 is proposed to be amended by revising paragraph (b) to read as follows:

1917.94 Foot protection.

* * * * *

(b) Protective shoes shall bear identifying marks or labels indicating compliance with manufacturing provisions of the American National Standard for Personal Protection—*Protective Footwear*-ANSI Z41–1991.

* * * * *

27. Section 1917.112 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1917.112 Guarding of edges.

(a) * * *

(1) Vehicle curbs, bull rails, or other effective barriers at least 6 inches (15.24 cm) in height, shall be provided at the waterside edges of aprons and bulkheads, except where vehicles are prohibited. Curbs or bull rails installed after October 3, 1983, shall be at least 10 inches (25.4 cm) in height.

* * * * *

28. Section 1917.118 is proposed to be amended by revising paragraphs (d)(2)(i) and (f)(2) to read as follows:

§ 1917.118 Fixed ladders.

* * * * *

(d) * * *

(2)(i) Ladders installed before October 3, 1983, shall have rungs evenly spaced from 9 to 16½ inches (22.9 to 41.9 cm) apart, center to center.

* * * * *

(f) * * *

(2) Form a continuous ladder, uniformly spaced vertically from 12 inches to 16 inches (30.5 to 41 cm) apart, with a minimum width of 10 inches (25.4 cm) and projecting at least 4½ inches (11.43 cm) from the wall;

* * * * *

29. Section 1917.119 is proposed to be amended by revising paragraphs (b)(1), (d)(2), and (f)(4) to read as follows:

§ 1917.119 Portable ladders.

* * * * *

(b) * * *

(1) Rungs of manufactured portable ladders obtained before October 3, 1983, shall be capable of supporting a 200-pound (890 N) load without deformation.

* * * * *

(d) * * *

(2) Are capable of supporting a 250-pound (1120 N) load without deformation; and

* * * * *

(f) * * *

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

* * * * *

30. Section 1917.121 is proposed to be amended by revising paragraph (b)(3) to read as follows:

§ 1917.121 Spiral stairways.

* * * * *

(b) * * *

(3) Minimum loading capability shall be 100 pounds per square foot (4.79 kPa), and minimum tread center concentrated loading shall be 300 pounds (1334 N);

* * * * *

31. Section 1917.124 is proposed to be amended by adding paragraphs (c)(5), (c)(6), and (d)(5) and revising the section heading and paragraph (d)(1) to read as follows:

§ 1917.124 Dockboards (car and bridge plates).

* * * * *

(c) * * *

(5) Dockboards shall be equipped with side boards that are at least 6 inches (15.2 cm) high along the space bridged.

(6) Dockboards shall be well maintained.

* * * * *

(d) *Ramps.* (1) Ramps shall be strong enough to support the loads imposed on them, provided with sideboards that are at least 6 inches (15.2 cm) high, properly secured and well maintained.

* * * * *

(5) Ramps shall be well maintained.

32. Section 1917.126 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1917.126 River banks.

* * * * *

(b) Where working surfaces at river banks slope so steeply that an employee could slip or fall into the water, the outer perimeter of the working surface shall be protected by posting or other portable protection such as roping off, and that employees wear a personal flotation device meeting the requirements of § 1917.95(b).

33. Section 1917.127 is proposed to be amended by revising paragraph (a)(1) introductory text and adding a table at the end of paragraph (a)(3) to read as follows:

§ 1917.127 Sanitation.

(a) *Washing and toilet facilities.* (1) Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the worksite. The number of toilet facilities shall be provided in accordance with the table at the end of paragraph (a) of this section. The facilities shall have:

* * * * *

(3) * * *

TOILET FACILITIES TABLE

No. of employees	Minimum no. of facilities
20 or less	1 toilet seat.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more ...	1 toilet seat and 1 urinal per 50 workers.

* * * * *

34. Section § 1917.151 is proposed to be amended by revising the section heading to read as follows:

§ 1917.151 Machine guarding.

(See 29 CFR part 1910, subpart O.)

* * * * *

35. Section 1917.152 is proposed to be amended by revising the section heading, the introductory text of both paragraphs (f)(1) and (f)(2) and (f)(3)(iv) to read as follows:

§ 1917.152 Welding, cutting and heating (hot work).[8]

(See 29 CFR 1917.2(p)).

* * * * *

(f) * * *

(1) Mechanical ventilation requirements. General mechanical ventilation or local exhaust systems shall meet the following requirements:

* * * * *

(2) Except as specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of this section, when hot work is performed in a confined space:

(3) * * *

(iv) Employees performing hot work in the open air that involves any of the metals listed in paragraphs (f)(3) (i) and (ii) of this section shall be protected by respirators in accordance with the requirements of § 1910.134, and those working on beryllium-containing base or filler metals shall be protected by supplied air respirators, in accordance with the requirements of § 1910.134.

* * * * *

[8] The U.S. Coast Guard, at 33 CFR 126.15(c), requires prior permission of the Captain of the Port if welding or other hot work is to be carried out at a facility where dangerous cargoes as defined by 33 CFR 126.07 are located or being handled.

36. Section 1917.153 is proposed to be amended by revising the section heading to read as follows:

§ 1917.153 Spray painting.

(See 29 CFR 1917.2(p)).

37. Section 1917.156 is proposed to be amended by revising paragraph (b)(3)(iii)(D) to read as follows:

§ 1917.156 Fuel handling and storage.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(D) Leakage at valves or connections; and

* * * * *

38. Section 1917.157 is proposed to be amended by revising paragraph (n) to read as follows:

§ 1917.157 Battery charging and changing.

* * * * *

(n) Chargers shall be turned off when leads are being connected or disconnected.

* * * * *

39. Part 1918 is proposed to be revised to read as follows:

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

Subpart A—Scope and Definitions

Sec.
1918.1 Scope and applicability
1918.2 Definitions

Subpart B—Gear Certification

1918.11 Gear certification.

Subpart C—Means of Access

1918.21 Gangways and other means of access.
1918.22 Jacob's ladders.
1918.23 Access to barges and river towboats.
1918.24 Bridge plates and ramps.
1918.25 Ladders.

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1918.31 Hatch coverings.
1918.32 Stowed cargo and temporary landing platforms.
1918.33 Deck loads.
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1918.65 Mechanically powered vehicles used aboard vessels.
1918.66 Cranes and derricks other than vessel's gear.
1918.67 Notifying ships's officers before using certain equipment.
1918.68 Grounding.
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Subpart H—Handling Cargo

1918.81 Slinging.
1918.82 Building drafts.
1918.83 Stowed cargo; tiering and breaking down.
1918.84 Bulling cargo.
1918.85 Containerized cargo operations.
1918.86 Roll-on roll-off (RO–RO) operations.
1918.87 Ship's cargo elevators.
1918.88 Log operations.
1918.89 Hazardous cargo. (See also § 1918.2(j)).

Subpart I—General Working Conditions

1918.90 Hazard communication (See § 1918.1(b)(6)).
1918.91 Housekeeping.
1918.92 Illumination.
1918.93 Hazardous atmospheres and substances. (See also § 1918.2(j)).
1918.94 Ventilation and atmospheric conditions. (See also § 1918.2 (j)).
1918.95 Sanitation.
1918.96 Longshoring operations in the vicinity of maintenance and repair work.
1918.97 First aid and lifesaving facilities.
1918.98 Personnel.

Subpart J—Personal Protective Equipment

1918.101 Eye protection.
1918.102 Respiratory protection. (See § 1918.1(b)(12)).
1918.103 Head protection.
1918.104 Foot protection.
1918.105 Other protective measures.

Appendix I to Part 1918—Cargo Gear Register and Certificates (Non-mandatory)

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear (Non-mandatory)

Appendix III to Part 1918—Container Top Safety (Non-mandatory)

Authority: Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart A—Scope and Definitions

§ 1918.1 Scope and Applicability.

(a) The regulations of this part apply to longshoring operations and related employments aboard vessels. All cargo transfer accomplished with the use of shore-based material handling devices

shall be regulated by part 1917 of this chapter.

(b) Part 1910 of this chapter does not apply to longshoring except for the following provisions:

(1) *Toxic and hazardous substances.* Subpart Z of part 1910 applies except that the requirements of subpart Z of part 1910 do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

(2) *Access to employee exposure and medical records.* Subpart C, § 1910.20;

(3) *Commercial diving operations.* Subpart T of part 1910;

(4) *Electrical.* Subpart S of part 1910; when shore-based electrical installations provide power for use aboard vessels;

(5) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of part 1910;

(6) *Hazard Communication.* Subpart Z, § 1910.1200;

(7) *Hazardous waste operations and emergency response.* Subpart H, § 1910.120(q).

(8) *Ionizing radiation.* Subpart G, § 1910.96;

(9) *Machinery and Machine Guarding.* Subpart O, § 1910.211;

(10) *Noise.* Subpart G, § 1910.95;

(11) *Nonionizing radiation.* Subpart G, § 1910.97; and (12)

(12) *Respiratory protection.* Subpart I, § 1910.134.

§ 1918.2 Definitions.

(a) The terms *hatch beam* or "strongback" mean a portable transverse or longitudinal beam which is placed across a hatchway and acts as a bearer to support the hatch covers.

(b) The term *bulling* means the horizontal dragging of cargo across a surface with none of the weight of the cargo supported by the fall.

(c) The term *designated person* means a person who possesses specialized abilities in a specific area and is assigned by the employer to perform a specific task in the area.

(d) The term *dockboards (car and bridge plates)* mean devices for spanning short distances between, for example, two barges, which do not expose employees to falls greater than 4 feet (1.2 m).

(e) The term *employee* means any longshore worker, or other person engaged in longshoring operations or related employments other than the master, ship's officers, crew of the vessel, or any person engaged by the master to load or unload any vessel under 18 net tons.

(f) The term *employer* means a person or company that employs workers in longshoring operations or related employments, as defined herein.

(g) The term *enclosed space* means an interior space in or on a vessel, other than a confined space, that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are holds, deep tanks and refrigerated compartments.

(h) *Fumigant* is a substance or mixture of substances, used to kill pests or prevent infestation, which is a gas or is rapidly or progressively transformed to the gaseous state, even though some nongaseous or particulate matter may remain and be dispersed in the treatment space.

(i) The term *gangway* means any ramp-like or stair-like means of access provided to enable personnel to board or leave a vessel, including accommodation ladders, gangplanks and brows.

(j) The term *hazardous cargo, materials, substance or atmosphere* means:

(1) Any substance listed in 29 CFR part 1910, subpart Z;

(2) Any material in the Hazardous Materials Table and Hazardous Materials Communications Regulations of the Department of Transportation, 49 CFR part 172;

(3) Any article not properly described by a name in the Hazardous Materials Table and Hazardous Materials Communication Regulations of the Department of Transportation, 49 CFR part 172, but which is properly classified under the definitions of those categories of dangerous articles given in 49 CFR part 173; or

(4) Any atmosphere with an oxygen content of less than 19.5 percent or greater than 23 percent.

(k) The term *intermodal container* means a reusable cargo container of rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

(l) The term *longshoring operations* means the loading, unloading, moving or handling of cargo, ship's stores, gear, etc., into, in, on, or out of any vessel.

(m) The term *public vessel* means a vessel owned and operated by a government and not regularly employed in merchant service.

(n) The term *ramp* means other flat surface devices for passage between levels and across openings not covered under the term "dockboards".

(o) The term *related employments* means any employments performed as an incident to or in conjunction with longshoring operations, including, but not restricted to, securing cargo, rigging, and employment as a porter, clerk, checker, or watchman.

(p) The term *Secretary* means the Secretary of Labor.

(q) The term *small trimming hatch* means a small hatch or opening, pierced in the 'tween-deck or other intermediate deck of a vessel, and intended for the trimming of dry bulk cargoes. It does not refer to the large hatchways through which cargo is normally handled.

(r) The term *vessel* includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

(s) For the purposes of §§ 1918.21, 1918.23, 1918.35, 1918.37, and 1918.43(f)(2), the term "barge" means an unpowered, flatbottomed, shallow draft vessel including river barges, scows, carfloats, and lighters. For the purposes of these sections the term does not include ship shaped or deep draft barges.

(t) For the purposes of §§ 1918.21 and 1918.23, the term "river towboat" means a shallow draft, low freeboard, self propelled vessel designed to tow river barges by pushing ahead. For purposes of these sections the term does not include other towing vessels.

(u) For the purpose of § 1918.11, the term "vessel's cargo handling gear" includes that gear which is a permanent part of the vessel's equipment and which is used for the handling of cargo other than bulk liquids. It does not include gear which is used only for handling or holding hoses, handling ship's stores or handling the gangway, or boom conveyor belt systems for the self-unloading of bulk cargo vessels. It does include all stationary or mobile

[1] The International Maritime Organization publishes International Maritime Dangerous Goods Code to aid compliance with the International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

cargo handling appliances, including shore-based power-operated ramps, used on shore or on board ship for suspending, raising, or lowering loads or moving them from one position to another while suspended or supported.

(v) For the purpose of § 1918.23(b), the term "Mississippi River System" includes the Mississippi River from the head of navigation to its mouth, and navigable tributaries including the Illinois Waterway, Missouri River, Ohio River, Tennessee River, Allegheny River, Cumberland River, Green River, Kanawha River, Monongahela River, and such others to which barge operations extend.

Subpart B—Gear Certification

§ 1918.11 Gear certification.

(See also § 1918.51).

(a) The employer shall not use the vessel's cargo handling gear until it has been ascertained that the vessel has a current and valid cargo gear register and certificates which in form and content are in substantial accordance with the recommendations of the International Labor Office, as set forth in Appendix I of this part, and as provided by International Labor Organization Convention No. 152, and which indicates that the cargo gear has been tested, examined and heat treated by or under the supervision of persons or organizations defined as competent to make register entries and issue certificates pursuant to paragraphs (c) and (d) of this section.

(b) Public vessels and vessels holding a valid Certificate of Inspection issued by the U.S. Coast Guard pursuant to 46 CFR part 91 are deemed to meet the requirements of paragraph (a) of this section.

(c) With respect to U.S. vessels not holding a valid Certificate of Inspection issued by the U.S. Coast Guard, persons or organizations competent to make entries in the registers and issue the certificates required by paragraph (a) of this section shall be only those persons currently accredited by (OSHA) U.S. Department of Labor, as provided in part 1919 of this chapter.

(d) With respect to vessels under foreign registry, persons or organizations competent to make entries in the registers and issue the certificates required by paragraph (a) of this section shall be:

(1) Those acceptable as such to any foreign nation;

(2) Those acceptable to the Commandant of the U.S. Coast Guard; or

(3) Those currently accredited by OSHA U.S. Department of Labor, as provided in part 1919 of this chapter.

Subpart C—Means of Access

§ 1918.21 Gangways and other means of access.

(a) The employer shall not permit employees to board or leave any vessel, except a barge or river towboat, until the following requirements have been met:

(1) Whenever practicable, a gangway of not less than 20 inches (.51 m) in width, of adequate strength, maintained in safe repair and safely secured shall be used. If a gangway is not practicable, a substantial straight ladder meeting the requirements of § 1918.25 of this subpart and extending at least 36 inches (.92 m) above the upper landing surface, and adequately secured against shifting or slipping shall be provided. When conditions are such that neither a gangway nor straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.22 may be used.

(2) Each side of such gangway, and the turntable, if used, shall have a railing with a minimum height of 33 inches (.84 m) measured perpendicularly from rail to walking surfaces at the stanchion, with a midrail. Rails shall be of wood, pipe, chain, wire, rope or materials of equivalent strength and shall be kept taut at all times. Portable stanchions supporting railings shall be so supported or secured as to prevent accidental dislodgement.

(b) The gangway shall be kept properly trimmed at all times.

(c) When a fixed flat tread accommodation ladder is used, and the angle is low enough to require employees to walk on the edge of the treads, cleated duckboards shall be laid over and secured to the ladder.

(d) When the gangway overhangs the water in such a manner that there is danger of employees falling between the ship and the dock, a net or suitable protection shall be provided to prevent employees from falling to a lower level.

(e) If the foot of the gangway is more than 1 foot (.30 m) away from the edge of the apron, the space between them shall be bridged by a firm walkway equipped with railings with a minimum height of approximately 33 inches (.84 m) with midrails on both sides.

(f) Gangways shall be kept clear of supporting bridles and other obstructions, in order to provide unobstructed passage. If, because of design, the gangway bridle cannot be moved in order to provide unobstructed passage, than the hazard shall be properly marked to alert employees of the danger.

(g) When the upper end of the means of access rests on or is flush with the top of the bulwark, substantial steps, properly secured, trimmed and equipped with at least one substantial hand rail 33 inches (.84 m) in height shall be provided between the top of the bulwark and the deck.

(h) Obstructions shall not be laid on or across the gangway.

(i) Handrails and walking surfaces of gangways shall be kept free of oil, grease, bulk cargoes or other substances that could cause an employee to slip and fall.

(j) The means of access shall be illuminated for its full length in accordance with § 1918.92.

(k) If possible, the vessel's means of access shall be located so that suspended loads do not pass over it. In any event, suspended loads shall not be passed over the means of access while employees or others are on it.

(l) Gangways on vessels inspected and certificated by the U.S. Coast Guard are deemed to meet the requirements of this section.

§ 1918.22 Jacob's ladders.

(a) Jacob's ladders shall be of the double rung or flat tread type. They shall be well maintained and properly secured.

(b) A Jacob's ladder shall either hang without slack from its lashings or be pulled up entirely.

§ 1918.23 Access to barges and river towboats.

(a) Ramps for access of vehicles to or between barges shall be:

(1) Of adequate strength for intended loads;

(2) Provided with side boards;

(3) Well maintained; and

(4) Properly secured.

(b) When employees cannot step safely to or from the wharf and a float, barge, or river towboat, either a ramp meeting the requirements of paragraph (a) of this section or a safe walkway meeting the requirements of § 1918.21(e) shall be provided. When a walkway cannot be used, a straight ladder meeting the requirements of § 1918.25 of this subpart and extending at least 36 inches (.92 m) above the upper landing surface and adequately secured against shifting or slipping shall be provided. When conditions are such that neither a walkway nor a straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.22 may be used. Exception: For barges operating on the Mississippi River System, where the employer demonstrates that these requirements cannot reasonably be met due to local conditions, other safe means of access shall be provided.

(c) When a barge, raft or log boom is being worked alongside a larger vessel,

a Jacob's ladder meeting the requirements of § 1918.22 shall be provided for each gang working alongside unless other safe means of access are provided. However, no more than two Jacob's ladders are required for any single barge, raft or log boom being worked.

(d) When longshoring operations are in progress on barges, the barges shall be securely made fast to the vessel, wharf, or dolphins.

(e) When a Jacob's ladder is used as the means of access to a barge being worked, spacers (bumpers) shall be hung between the vessel, barge, or other structure to which the barge is tied alongside, or other equally effective means shall be taken to prevent damage to the bottom rungs of the ladder.

(f) When a Jacob's ladder is being used in such a manner that there is a danger of an employee falling between the vessel, barge, or other structure (pier), a net or other equivalent protection shall be provided.

§ 1918.24 Bridge plates and ramps.

(See also § 1918.86).

(a) *Bridge and car plates (dockboards).* Bridge and car plates used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be secured or equipped with devices to prevent their dislodgement;

(3) Be equipped with hand holds or other effective means to permit safe handling and;

(4) Be equipped with side boards that are at least 6 inches (.16 m) high along the space bridged.

(b) *Portable ramps.* Portable ramps used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be equipped with a railing meeting the requirements of § 1918.21(a)(2), if the slope is more than 20 degrees to the horizontal or if employees could fall more than 4 feet (1.2 m);

(3) Be equipped with a slip resistant surface;

(4) Be properly secured; and

(5) Be equipped with side boards that are at least 6 inches (15.2 cm) high.

§ 1918.25 Ladders.

(a) There shall be at least one safe and accessible ladder for each gang working in a hatch. However, no more than two such ladders are required in any hatch. An effective means of gaining a handhold shall be provided at or near the head of each vertical fixed ladder cannot serve this purpose.

(b) When any fixed ladder is visibly unsafe, the employer shall identify such ladder and prohibit its use by employees.

(c) Where portable straight ladders are used, they shall be of sufficient length to extend 36 inches (.91 m) above the upper landing surface, and positively secured or held against shifting or slipping. When conditions are such that a straight ladder cannot be used, Jacob's ladders meeting the requirements of § 1918.22 may be used.

(d) When 6 inches (15.2 cm) or more of clearance does not exist in back of ladder rungs, the ladder shall be deemed "unsafe" for the purpose of this section. However, for vessels built prior to December 5, 1981, the ladder shall be deemed "unsafe" when 4 inches (10 cm) or more of clearance does not exist in back of ladder rungs. Alternate means of access (for example, a portable ladder) must be utilized.

(e) (1) Where access to or from a stowed deckload or other cargo is needed and no other safe means is available, ladders or steps of adequate strength shall be furnished, and positively secured or held against shifting or slipping while in use. Steps formed by the cargo itself are acceptable when the employer demonstrates that the nature of the cargo and the type of stowage provides equivalent safe access.

(2) Where portable straight ladders are used they shall be of sufficient length to extend at least 36 inches (.92 m) above the upper landing surface.

(f) The following standards for existing manufactured portable ladders must be met:

(1) Rungs of manufactured portable ladders obtained before [insert effective date of the Final Rule] shall be capable of supporting a 200-pound (890 N) load without deformation.

(2) Rungs shall be evenly spaced from 9 to 16½ inches (22.9 to 41.9 cm), center to center.

(3) Rungs shall be continuous members between rails. Each rung of a double-rung ladder (two side rails and a center rail) shall extend the full width of the ladder.

(4) Width between side rails at the base of the ladder shall be at least 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least one-fourth inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(g) *Standards for manufactured portable ladders.* Portable manufactured ladders obtained after [insert effective date of the Final Rule] shall bear identification indicating that they meet the appropriate ladder construction requirements of the following standards:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders;

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders;

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders.

(h) *Standards for job-made portable ladders.* Job-made ladders shall:

(1) Have a minimum and uniform distance between rungs of 12 inches (30 cm) center to center;

(2) Be capable of supporting a 250-pound (1100 N) load without deformation; and

(3) Have a minimum width between side rails of 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in height. Width between rails shall increase at least one-fourth inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(i) *Maintenance and inspection.* (1) The employer shall maintain portable ladders in safe condition. Ladders with the following defects shall not be used, and shall either be tagged as unusable if kept on board, or shall be removed from the vessel:

(i) Broken, split or missing rungs, cleats or steps;

(ii) Broken or split side rails;

(iii) Missing or loose bolts, rivets or fastenings;

(iv) Defective ropes; or

(v) Any other structural defect.

(2) Ladders shall be inspected for defects prior to each day's use, and after any occurrence, such as a fall, which could damage the ladder.

(j) *Ladder usage.* (1) Ladders made by fastening rungs or devices across a single rail are prohibited.

(2) Ladders shall not be used:

(i) As guys, braces or skids; or

(ii) As platforms, runways or scaffolds.

(3) Metal and wire-reinforced ladders with wooden side rails may not be used when employees on the ladder might come into contact with energized electrical conductors.

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

(5) Except for combination ladders, self-supporting ladders shall not be used as single straight ladders.

(6) Unless intended for cantilever operation, non-self-supporting ladders shall not be used to climb above the top support point.

(7) Ladders shall be securely positioned on a level and firm base.

(8) Ladders shall be fitted with slip-resistant bases or lashed in place to

prevent slipping or shifting while in use.

Subpart D—Working Surfaces

§ 1918.31 Hatch coverings.

(a) No cargo, dunnage, or other material shall be loaded or unloaded by means requiring the services of employees at any partially opened intermediate deck unless either the hatch at that deck is sufficiently covered or an adequate landing area suitable for the prevailing conditions exists. Except, that in no event shall such work be done unless the working area available for such employees extends for a distance of 10 feet (3.05 m) or more fore and aft and athwartships.

(b) Cargo shall not be landed on or handled over a covered hatch or 'tween-deck unless all hatch beams are in place under the hatch covers.

(c) Missing, broken, or poorly fitting hatch covers that would jeopardize the safety of employees shall be reported at once to the officer in charge of the vessel. Pending replacement or repairs by the vessel, work shall not be performed in the section containing the unsafe covers or in adjacent sections unless the flooring is made safe.

(d) Hatch covers and hatch beams not of uniform size shall be placed only in the hatch, deck, and section in which they fit properly.

(e) Small trimming hatches located in intermediate decks shall be securely covered or guarded while work is proceeding in the hatch in which they are located, unless they are actually in use.

§ 1918.32 Stowed cargo and temporary landing surfaces.

(a) Temporary surfaces on which loads are to be landed shall be of sufficient size and strength to permit employees to work safely.

(b) When the edge of a hatch section or of stowed cargo (excluding intermodal freight containers) is more than 8 feet (2.4 m) high and so exposed that it exposes an employee to fall hazards, the edge shall be guarded by a vertical safety net, or other means providing equal protection, to prevent an employee from falling. When the employer can demonstrate that vertical nets or other equally effective means of guarding cannot be used due to the type of cargo, cargo stowage, or other circumstances, a trapeze net shall be rigged at the top edge of the elevation or other means shall be taken to prevent injury if an employee falls. Safety net systems and their use shall comply with the appropriate provisions of the American National Standard for Personnel and Debris Nets (ANSI A10.11–1989).

(c) When two gangs are working in the same hatch on different levels, a safety net shall be rigged and securely fastened so as to prevent employees or cargo from falling.

§ 1918.33 Deck loads.

(a) Employees shall not be permitted to pass over or around deck loads unless there is a safe passage.

(b) Signalpersons shall not be permitted to walk over deck loads from rail to coaming unless there is a safe passage. If it is necessary to stand or walk at the outboard or inboard edge of the deck load having less than 24 inches (.61 cm) of bulwark, rail, coaming, or other protection exists, any signalpersons shall be provided with an equivalent means of protection against falling from the deck load.

§ 1918.34 Other decks.

(a) Cargo shall not be worked on decks that were not designed to support the load being worked.

(b) Grated decks shall be properly placed, supported, maintained and designed to support workers.

§ 1918.35 Open hatches.

Open weather deck hatches around which employees must work, which are not protected to a height of 24 inches (.61 cm) by coamings, shall be guarded by taut lines or barricades at a height of 36 to 42 inches (.92 to 1.07 m) above the deck, except on the side on which cargo is being worked. Any portable stanchions or uprights used shall be so supported or secured as to prevent accidental dislodgement.

§ 1918.36 Weather deck rails.

Removable weather deck rails shall be kept in place except when cargo operations require them to be removed, in which case they shall be replaced as soon as such cargo operations are completed.

§ 1918.37 Barges.

(a) Walking shall be prohibited along the sides of covered lighters or barges with coamings or cargo more than 5 feet (1.5 m) high unless a 3-foot (.91 m) clear walkway or a grab rail or taut handline is provided.

(b) Walking or working shall be prohibited on the decks of barges to be loaded unless the walking or working surfaces have been determined by visual inspection to be sound structurally and maintained properly. If in the course of discharging a barge and an unsound deck surface is discovered, work shall be discontinued and shall not be resumed until means have been taken to ensure a safe work surface.

§ 1918.38 Log rafts.

(See also § 1918.88.)

When an employee is working logs out of the water, walking sticks [2] (safety sticks) shall be provided as follows:

(a) They shall be planked and be no less than 24 inches (60.9 cm) wide;

(b) They shall extend along the entire length of all rafts on the offshore side of the vessel, and to the means of access to the log raft(s); and

(c) They shall be buoyant enough to keep the walking surface above the waterline when employees are walking on them.

Subpart E—Opening and Closing Hatches

§ 1918.41 Coaming clearances.

(a) *Weather deck.* If a deck load (such as lumber or other smooth sided deck cargo) over 5 feet (1.5 m) high is stowed within 3 feet (.91 m) of the hatch coaming and employees handling hatch beams and hatch covers are not protected by a coaming at least 24-inch (.61 m) high, a taut handline shall be provided along the side of the deckload. The requirements of § 1918.35 are not intended to apply in this situation.

(b) *Intermediate deck.* (1) There shall be a 3 foot (.91 m) working space between the stowed cargo and the coaming at both sides and at one end of the hatches with athwartship hatch beams, and at both ends of those hatches with fore and aft hatch beams, before intermediate deck hatch covers and hatch beams are removed or replaced by employees.

(2) The 3 foot (.91 m) clearance required by paragraph (b)(1) of this section is not required on the covered portion of a partially open hatch, nor is it required when lower decks have been filled to hatch beam height with cargo of such a nature as to provide a safe surface upon which employees may work.

(3) For purposes of paragraph (b)(1) of this section, fitted gratings which are in good condition shall be considered a part of the decking when properly placed within the 3 foot (.91 m) area.

(c) Grab rails or taut handlines shall be provided for the protection of employees handling hatch beams and hatch covers, when bulkheads, lockers, reefer compartments or large spare parts are within 3 feet (.91 m) of the coaming.

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[2] A "walking stick" is two logs bolted or otherwise secured together with two or three planks firmly attached on top that serves as a floating walking and working surface and that is used in the loading of logs onto vessels from the water.

(d) This section does not apply to hatches which are opened or closed by hydraulic or other mechanical means. However, in all cases in which the 3 foot (.91 m) clearance does not exist, means shall be taken to prevent stowed cargo which is likely to shift from falling into the hold.

§ 1918.42 Hatch beam and pontoon bridles.

(a) Hatch beam and pontoon bridles shall be:

(1) long enough to easily reach the holes, rings, or other lifting attachments on the hatch beams and pontoons;

(2) of adequate strength to safely lift the load; and

(3) properly maintained, including covering or blunting of protruding ends in wire rope splices.

(b) Bridles for lifting hatch beams shall be equipped with toggles, shackles, or hooks, or other devices of such design that they cannot become accidentally dislodged from the hatch beams with which they are used. Hooks other than those herein described may be used only when they are hooked into the standing part of the bridle. Toggles, when used, shall be at least 1 inch (2.5 cm) longer than twice the longest diameter of the holes into which they are placed.

(c) Bridles used for lifting pontoons and plugs shall have the number of legs required by the design of the pontoon or plug, and all legs shall be used. Where any use of a bridle requires fewer than the number of legs provided, idle legs shall be hung on the hook or ring, or otherwise prevented from swinging free.

(d) At least two legs of all strongback and pontoon bridles shall be equipped with a fibre lanyard at least 8 feet (2.4 m) long and in good condition. The bridle end of the lanyard shall be of chain or wire.

§ 1918.43 Handling hatch beams and covers.

Paragraphs (f)(2), (g), and (h) of this section apply only to folding, sliding, or hinged metal hatch covers or to those hatch covers handled by cranes.

(a) (1) When hatch covers or pontoons are stowed on the weather deck abreast of hatches, they shall be arranged in stable piles not closer than 3 feet (.91 m) from the hatch coaming except, when on the working side of the hatch, they are spread one high between coaming and bulwark with no space between them and with not less than a 24-inch height of hatch coaming maintained. Under no circumstances shall hatch covers or pontoons be stacked higher than the hatch coaming or bulwark on the working side of the hatch.

(2) On seagoing vessels, hatch boards or similar covers removed from the hatch beams in a section of partially opened hatch during cargo handling, cleaning or other operations, shall not be stowed on those left in place within that section.

(b) Hatch beams shall be laid on their sides, or stood on edge close together and lashed. Except that: This paragraph (b) shall not apply in cases where hatch beams are of such design that:

(1) The width of the flange is 50 percent or more of the height of the web; and

(2) The flange rests flat on the deck when the hatch beam is stood upright.

(c) Strongbacks, hatch covers, and pontoons removed from hatch openings and placed on the weather deck shall not obstruct clear fore and aft or coaming to bulwark passageways and shall be lashed or otherwise secured to prevent accidental dislodgement. Dunnage or other suitable material shall be placed under each tier, to prevent strongbacks and hatch covers from sliding, when stowed on steel decks.

(d) Hatch covers unshipped in an intermediate deck shall be placed at least 3 feet (.91 m) from the coaming or they shall be removed to another deck. Strongbacks unshipped in an intermediate deck shall not be placed closer than 6 inches (15.2 cm) from the coaming, and if placed closer than 3 feet (.91 m), they shall be secured so that they cannot be tipped or dragged into a lower compartment. If such placement or securement is not possible, strongbacks shall be removed to another deck.

(e) Any hatch beam or pontoon left in place adjacent to an open hatch section being worked shall be locked or otherwise secured, so that it cannot be accidently displaced. All portable, manually handled hatch covers, including those bound together to make a larger cover, shall be removed from any working section, and adjacent sections, unless securely lashed.

(f) (1) The roller hatch beam at the edge of the open section of the hatch shall be lashed or pinned back so that it cannot be moved toward the open section.

(2) Rolling, sectional or telescopic hatch covers of barges which open in a fore and aft direction shall be secured while in the open position against unintentional movement.

(g) Hinged or folding hatch covers normally stowed in an approximately vertical position shall be positively secured when in the upright position, unless the design of the system otherwise prohibits unintentional movement.

(h) Hatches shall not be opened or closed while employees are in the square of the hatch below.

(i) All unsecured materials such as dunnage, lashings, twist-locks, or stacking cones shall be removed from the hatch cover before the hatch cover is moved.

(j) When a hatch is to be covered, hatch covers or night tents shall be used. Any covering which only partially covers the hatch, such as alternate hatch covers or strips of dunnage, shall not be covered by a tarpaulin. Except that: A tarpaulin may be used to cover an open or partially open hatch in order to reduce dust emissions during bulk cargo loading operations, provided that employees are prevented from walking on top of the tarpaulin.

Subpart F—Vessel's Cargo Handling Gear

§ 1918.51 General requirements.

(See also § 1918.11).

(a) Neither the safe working load as specified in the cargo gear certification papers, nor any safe working load marked on the booms, shall be exceeded. Any limitations imposed by the certificating authority shall be adhered to.

(b) All components of cargo handling gear, including tent gantlines and associated rigging, shall be inspected by the employer or by a designated representative of the employer before each use and at intervals during use. Any gear which is found to be unsafe shall not be used until it is made safe.

(c) The following limitations shall apply to the use of wire rope as a part of the ship's cargo handling gear:

(1) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which provide the same level of safety may be used;

(2) Except for eye splices in the ends of wires, each wire rope used in hoisting or lowering, in guying derricks, or as a topping lift, preventer, segment of a multi-part preventer, or pendant, shall consist of one continuous piece without knot or splice; and

(3) Wire rope or wire rope slings exhibiting any of the conditions specified in § 1918.62(b)(4) (i) through (vi) shall not be used.

(d) Natural and synthetic fibre rope slings exhibiting any of the conditions specified in § 1918.62(e) (1) through (7) shall not be used.

(e) Synthetic web slings exhibiting any of the conditions specified in § 1918.62(g)(2) (i) through (v) shall not be used.

(f) Chains, including slings, exhibiting any of the conditions specified in § 1918.62(h)(3)(iii), (iv), and (h)(6) shall not be used.

§ 1918.52 Specific requirements.

(a) *Preventers.* (1) When preventers are used they shall be of sufficient strength for the intended purpose and secured to the head of the boom independent of working guys except when, in the case of cast fittings, the strength of the fitting exceeds the total strength of all lines secured to it. Any tails, fittings, or other means of making the preventers fast on deck shall provide strength equal to that of the preventer itself.

(2) Wire rope clips or knots shall not be used to form eyes in, nor to join sections of, preventer guys.

(b) *Stoppers.* (1) When used, chain topping lift stoppers shall be in good condition, equipped with fibre tails, and of a length to allow not fewer than three half-hitches in the chain.

(2) When used, chain stoppers shall be shackled or otherwise secured in such a manner that their links are not bent by being passed around fittings. The point of attachment shall be of sufficient strength and so located that the stoppers are in line with the normal topping lift lead at the time the stopper is applied.

(3) When used, patent stoppers of the clamp type shall be suited to the size of the rope used. Clamps shall be in good condition and free of paint and dirt which would prevent their being drawn tight.

(c) *Falls.* (1) The end of the winch fall shall be secured to the drum by clamps, U-bolts, shackles, or some other equally strong method. Fibre rope fastenings shall not be used.

(2) Winch falls shall not be used with fewer than three turns on the winch drum.

(3) Eyes in the ends of wire rope cargo falls shall not be formed by knots and, in single part falls, shall not be formed by wire rope clips.

(4) When the design of the winch permits, the fall shall be so wound on the drum so that the cargo hook rises when the winch control lever is pulled back and lowers when the lever is pushed forward.

(d) *Heel blocks.* (1) When an employee works in the bight formed by the heel block, a preventer of at least three quarter inch (1.9 cm) diameter wire rope shall be securely rigged, or equally effective means shall be taken, to hold the block and fall in the event that the heel block attachments fail. Where physical limitations prohibit the fitting of a wire rope preventer of the required size, two turns of one-half inch (1.3 cm) diameter wire rope shall be sufficient.

(2) If the heel block is not so rigged as to prevent its falling when not under strain, it shall be secured to prevent alternate raising and dropping of the block. Except that: This requirement shall not apply when the heel block is so located as to be at least 10 feet (3.0 m) above the deck when at its lowest point.

(e) *Coaming rollers.* Portable coaming rollers shall be secured by wire preventers in addition to the regular coaming clamps.

(f) *Cargo hooks.* Cargo hooks shall be as close to the junction of the falls as the assembly permits, but in no case farther than 2 feet (.61 m) from it. Except, that this provision shall not apply when the construction of the vessel and the operation in progress are such that fall angles in excess of 120 degrees do not normally occur. Overhaul chains shall not be shortened by bolting or knotting.

§ 1918.53 Cargo winches.

(a) Moving parts of winches or other deck machinery shall be guarded.

(b) Winches shall not be used if control levers operate with excessive friction or excessive play.

(c) Double gear winches or other winches equipped with a clutch shall not be used unless a positive means of locking the gear shift is provided.

(d) There shall be no load other than the fall and cargo hook assembly on the winch when changing gears on a two gear winch.

(e) Any defect or malfunction of winches that affects safety shall be reported immediately to the officer in charge of the vessel, and the winch shall not be used until the defect or malfunction is corrected.

(f) Temporary seats and shelters for winch drivers which create a hazard to the winch operator or other employees shall not be used.

(g) Except for short handles on wheel type controls, winch drivers shall not be permitted to use winch control extension levers unless they are provided by either the ship or the employer. Such levers shall be of adequate strength and securely fastened with metal connections at the fulcrum and at the permanent control lever.

(h) Extension control levers which tend to fall of their own weight shall be counterbalanced.

(i) Winch brakes shall be monitored for performance. If winch brakes are unable to hold the load, the winch shall not be used.

(j) Winches shall not be used when one or more control points, either hoisting or lowering, is not operating properly. Employees shall not be permitted to tamper with or adjust control systems.

(k) When winches are left unattended, control levers shall be placed in the neutral position and the power shall be shut off or control levers shall be locked at the winch or the operating controls.

§ 1918.54 Rigging gear.

(a) *Guy and preventer placement.* Each guy or preventer shall be placed so as to prevent it from making contact with any other guy, preventer, or stay.

(b) *Guys.* When alternate positions for securing guys are provided, the guys shall be so placed as to produce a minimum stress without permitting the boom to jackknife.

(c) *Boom placement.* The head of the midship boom shall be spotted no farther outboard of the coaming than is necessary for control of the load.

(d) *Preventers.* (1) Preventers shall be properly secured to suitable fittings, other than those to which the guys are secured, and shall be as nearly parallel to the guys as available fittings permit.

(2) Unless the cleat is also a chock and the hauling part is led through the chock opening, the leads of preventers to cleats shall be such that the direction of the line pull of the preventer is as nearly as possible parallel to the plane of the surface on which the cleat is mounted.

(3) Guys and associated preventers shall be adjusted so as to share the load as equally as practicable where cargo operations are being conducted by burtoning. Except, that where guys are designed and intended for trimming purposes only, and the preventer is intended to perform the function of the guy, the guy shall be left slack.

(e) *Cargo falls.* Cargo falls under load shall not be permitted to chafe on any standing or other running rigging. Exception: Rigging shall not be construed to mean hatch coamings or other similar structural parts of the vessel.

(f) *Bull wire.* (1) Where a bull wire is taken to a gypsy head for the purpose of lowering or topping a boom, the bull wire shall be secured to the gypsy head by shackle or other equally strong method. Securing by fibre rope fastening will not be acceptable in meeting this requirement.

(2) When, in lowering or topping a boom, it is not possible to secure the bullwire to the gypsy head, or when the topping lift itself is taken to the gypsy head, multiple turns, of at least five shall be used.

(g) *Trimming and deckloads.* When deck loads extend above the rail and

there is less than 12 inches (30.48 cm) horizontal clearance between the edge of the deck load and the inside of the bulwark or rail, a pendant or other alternate device shall be provided to allow trimming of the gear without going overside.

§ 1918.55 Cranes.

(See also § 1918.11).

The following requirements shall apply to the use of cranes forming part of a vessel's permanent equipment.

(a) *Defects.* Cranes with a visible or known defect that affects safe operation shall not be used. Defects shall be reported immediately to the officer in charge of the vessel.

(b) *Operator's station.* (1) Good visibility shall be maintained through the cab's glass (or equivalent). Cranes with broken, cracked, or scratched glass (or equivalent) that impair operator visibility shall not be used.

(2) Clothing, tools and equipment shall be so stored as to not interfere with access, operation or the operator's view.

(c) *Cargo operations.* (1) Accessible areas within the swing radius of the body of a revolving crane or within the travel of a shipboard gantry crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane.

(2) Limit switch bypass systems shall be secured during all cargo operations.

(3) Under all operating conditions, at least three full turns of rope shall remain on ungrooved drums, and two full turns on grooved drums.

(4) Crane brakes shall be monitored for performance. If crane brakes are unable to hold the load, the crane shall not be used.

(5) Cranes shall not be used if control levers operate with excessive friction or excessive play.

(6) When cranes are equipped with power down capability, there shall be no free fall of the gear when a load is attached.

(7) When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the gear and movements to be made.

(d) *Unattended cranes.* When cranes are left unattended between work periods, § 1918.66(b)(4)(i) through (v) shall apply.

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

§ 1918.61 General.

(a) *Employer provided gear inspection.* All gear and equipment provided by the employer shall be inspected by the employer or designated person before each use and, when necessary, at intervals during its use, to ensure that it is safe. Any gear which is found upon such inspection to be unsafe shall not be used until it is made safe.

(b) *Safe working load.* (1) The safe working load of gear as specified in §§ 1918.61 through 1918.66 shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than 5 short tons (10,000 lbs. or 4540 kg.) shall have its safe working load plainly marked on it.

(c) *Gear weight markings.* The weight shall be plainly marked on any article of stevedoring gear hoisted by ship's gear and weighing in excess of 2,000 lbs (908 kg).

(d) *Certification.* The employer shall not use any material handling device listed in paragraph (f) of this section until it has been ascertained that the device has been certificated, as evidenced by current and valid documents attesting to compliance with the requirements of paragraph (e) of this section.

(e) *Certification procedures.* The certifications required by this section shall be performed in accordance with part 1919 of this chapter, by persons then currently accredited by OSHA as provided in that part.

(f) *Special gear.* (1) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, that has been purchased or fabricated after [insert date 90 days after publication of Final Rule], and has a Safe Working Load (SWL) greater than 5 short tons (10,000 lbs or 4540 kg.) shall be inspected and tested as a unit in accordance with the following table before initially being put into use:

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess.
Over 20 to 50 short tons (18.1 to 45.3 metric tons).	5 short tons in excess.
Over 50 short tons (45.3 metric tons).	10 percent in excess.

(2) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, with a SWL of 5 short tons (10,000 or 4540 kg.) or less shall be inspected and tested as a unit in accordance with this section or by a designated person, in accordance with the table in § 1918.61(f)(1) before initially being put into use.

(g) Every spreader not a part of ship's gear and used for handling intermodal containers that has been purchased or fabricated after [insert date 90 days after publication of Final Rule] shall be inspected and tested to a proof load equal to 25 percent in excess of its rated capacity before being put into use. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(h) All cargo handling gear covered by this section with a SWL greater than 5 short tons (10,000 lbs. or 4540 kg.) shall be proof load tested in accordance with the chart in paragraph (f) of this section every four years in accordance with paragraphs (d) and (e) of this section or by a designated person.

(i) Certificates attesting to the required tests shall be available for inspection.

§ 1918.62 Miscellaneous auxiliary gear.

(a) *Routine inspection.* (1) At the completion of each use, loose gear such as slings, chains, bridles, blocks and hooks shall be so placed as to avoid damage to the gear. Loose gear shall be inspected and any defects corrected before reuse.

(2) Defective gear shall not be used. Distorted hooks, shackles or similar gear shall be discarded.

(b) *Wire rope and wire rope slings.* (1) The employer shall ascertain and adhere to the load ratings indicated on the vessel's wire rope certificates for all wire rope and wire rope slings comprising part of ship's gear.

(2) The employer shall adhere to the manufacturer's recommended ratings for wire rope and wire rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, the employer shall use tables for wire rope and wire rope slings found in Appendix II to this part. A design safety factor of at least five shall be maintained for the common sizes of running wire used as falls in purchases, or in such uses as light load slings.

(3) Wire rope with a safety factor of less than five may be used only as follows:

(i) In specialized equipment, such as, but not limited to, cranes designed to be used with lesser wire rope safety factors;

(ii) In accordance with design factors in standing rigging applications; or

(iii) For heavy lifts or other purposes for which a safety factor of five is not feasible and for which the employer can

demonstrate that equivalent safety is ensured.

(4) Wire rope or wire rope slings provided by the employer and having any of the following conditions shall not be used:

(i) Ten randomly distributed broken wires in one rope lay or three or more broken wires in one strand in one rope lay;

(ii) Kinking, crushing, bird caging or other damage resulting in distortion of the wire rope structure;

(iii) Evidence of heat damage;

(iv) Excessive wear or corrosion, deformation or other defect in the wire or attachments, including cracks in attachments;

(v) Any indication of strand or wire slippage in end attachments; or

(vi) More than one broken wire in the close vicinity of a socket or swaged fitting.

(5) Protruding ends of strands in splices on slings and bridles shall be covered or blunted. Coverings shall be removable so that splices can be examined. Means used to cover or blunt ends shall not damage the wire.

(6) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be available for inspection. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table 1 of Appendix II to this part shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

(7) Wire rope shall not be secured by knotting.

(8) Eyes in wire rope bridles, slings, bull wires, or in single parts used for hoisting shall not be formed by wire rope clips or knots.

(9) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope, and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which are shown to be equivalently safe may be used.

(10) Except for eye splices in the ends of wires and endless rope slings, each wire rope used in hoisting or lowering, or bulling cargo, shall consist of one continuous piece without knot or splice.

(c) *Natural fibre rope.* (1) The employer shall ascertain and adhere to the manufacturer's recommended ratings for natural fibre rope and natural fibre rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, Appendix II to this part provides guidelines for fibre rope ratings.

(2) If the manufacturers recommended ratings and use recommendations are unavailable, Table 2 of Appendix II to this part provides guidelines to determine safe working loads of natural fibre rope slings comprising part of pre-slung drafts.

(3) Eye splices shall consist of at least three full tucks. Short splices shall consist of at least six tucks, three on each side of the centerline.

(d) *Synthetic rope.* (1) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fibre rope and synthetic fibre rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, the employer shall use Tables 3A and B of Appendix II to this part.

(2) If the manufacturers recommended ratings and use recommendations are unavailable, Tables 3A and B of Appendix II to this part shall be used to determine the safe working load of synthetic fibre rope and of synthetic rope slings comprising part of pre-slung drafts.

(3) Unless otherwise recommended by the manufacturer, when synthetic fibre ropes are substituted for natural fibre ropes of less than 3 inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for natural fibre rope of 3 inches (7.62 cm) or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{0.6C_s^2 + 0.4C_m^2}$$

Where C=the required circumference of the synthetic rope in inches (centimeters); C_s= the circumference to the nearest one-quarter inch (.6 cm) of a synthetic rope having a breaking strength no less than that of the size natural fibre rope that would be required by paragraph (c) of this section; and C_m= the circumference of natural fibre rope in inches (centimeters) which would be required by paragraph (c) of this section. In making each substitution, it shall be ascertained that the inherent characteristics of the synthetic-fibre are suitable for hoisting.

(e) *Removal of natural and synthetic rope from service.* Natural and synthetic rope having any of the following defects shall be removed from service:

(1) Abnormal or excessive wear including heat and chemical damage;

(2) Powdered fibre between strands;

(3) Sufficient cut or broken fibers to affect the capability of the rope;

(4) Variations in the size or roundness of strands;

(5) Discolorations other than stains not associated with rope damage;

(6) Rotting; or

(7) Distortion or other damage to attached hardware.

(f) *Thimbles.* Properly fitting thimbles shall be used when any rope is secured permanently to a ring, shackle or attachment, where practicable.

(g) *Synthetic web slings.* (1) Slings and nets or other combinations of more than one piece of synthetic webbing assembled and used as a single unit (synthetic web slings) shall not be used to hoist loads in excess of the sling's rated capacity.

(2) Synthetic web slings shall be removed from service if they exhibit any of the following defects:

(i) Acid or caustic burns;

(ii) Melting or charring of any part of the sling surface;

(iii) Snags, punctures, tears or cuts;

(iv) Broken or worn stitches;

(v) Distortion or damage to fittings; or

(vi) Display of visible warning threads or markers designed to indicate excessive wear or damage.

(3) Defective synthetic web slings removed from service shall not be returned to service unless repaired by a sling manufacturer or an entity of similar competence. Each repaired sling shall be proof tested by the repairer to twice the sling's rated capacity prior to its return to service. The employer shall retain a certificate of the proof test and make it available for inspection.

(4) Synthetic web slings provided by the employer shall only be used in accordance with the manufacturer's use recommendations, which shall be available.

(5) Fittings shall have a breaking strength at least equal to that of the sling to which they are attached and shall be free of sharp edges.

(h) *Chains and chain slings used for hoisting.* (1) The employer shall adhere to the manufacturer's recommended ratings for safe working loads for the size of wrought iron and alloy steel chains and chain slings and shall have such ratings available for inspection. When the manufacturer does not provide such ratings, the employer shall use Table 4A of Appendix II to this part to determine safe working loads for alloy steel chains and chain slings only.

(2) Proof coil steel chain, also known as common or hardware chain, and other chain not recommended by the manufacturer for slinging or hoisting, shall not be used for slinging or hoisting.

(3) (i) Sling chains, including end fastenings, shall be inspected for visible

defects before each day's use and as often as necessary during use to ensure integrity of the sling.

(ii) Thorough inspections of chains in use shall be made quarterly to detect wear, defective welds, deformation or increase in length or stretch. The month of inspection shall be indicated on each chain by color of paint on a link or by other equally effective means.

(iii) Chains shall be removed from service when maximum allowable wear, as indicated in Table 4B of Appendix II to this part, is reached at any point of a link.

(iv) Chain slings shall be removed from service when stretch has increased the length of a measured section by more than five percent; when a link is bent, twisted or otherwise damaged; or when a link has a raised scarf or defective weld.

(v) Only designated persons shall inspect chains used for slinging and hoisting.

(4) Chains shall only be repaired under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(iv) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof test load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5) (i) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

(ii) No new part of a lifting appliance or item of loose gear shall be manufactured of wrought iron.

(6) Kinked or knotted chains shall not be used for lifting. Chains shall not be shortened by bolting, wiring or knotting. Makeshift links or fasteners such as wire, bolts or rods shall not be used.

(7) Hooks, rings, links and attachments affixed to sling chains shall have rated capacities at least equal to that of the chains to which they are attached.

(8) Chain slings shall bear identification of size, grade and rated capacity.

(i) *Shackles.* (1) If available, the manufacturer's recommended safe working loads for shackles shall not be exceeded. In the absence of the manufacturer's recommendations, Table 5 of Appendix II to this part, shall apply.

(2) Screw pin shackles provided by the employer and used aloft, except in cargo hook assemblies, shall have their pins positively secured.

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. Hooks other than hand hooks shall be tested in accordance with the provisions of paragraphs (a), (c) and (d) of § 1919.31 of this chapter, except, that manufacturer's test certificates indicating performance to the criteria in § 1919.31 (a), (c) and (d) of this chapter shall be acceptable.

(2) Bent or sprung hooks shall be discarded.

(3) Teeth of case hooks shall be maintained in safe condition.

(4) Jaws of patent clamp-type plate hooks shall be maintained in condition to grip plates securely.

(5) Loads shall be applied to the throat of the hook only.

(k) *Pallets.* (1) Pallets shall be made and maintained to support and carry loads being handled safely. Fastenings of reusable pallets used for hoisting shall be bolts and nuts, drive screws (helically threaded nails), annular threaded nails or fastenings of equivalent holding strength.

(2) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least 3 inches (7.6 cm). They shall not be hoisted by wire slings alone.

(3) Loaded pallets that do not meet the requirements of this paragraph shall be hoisted only after being placed on pallets meeting such requirements, or shall be handled by other means providing equivalent safety.

(4) Bridles for handling flush end or box-type pallets shall be designed to prevent disengagement from the pallet under load.

(5) Pallets shall be stacked or placed to prevent falling, collapsing or otherwise causing a hazard under standard operating conditions.

(6) Disposable pallets intended only for one use shall not be reused for hoisting.

§ 1918.63 Chutes, gravity conveyors and rollers.

(a) Chutes shall be of adequate length and strength to support the conditions of use, and shall be free of splinters and sharp edges.

(b) When necessary for the safety of employees, chutes shall be equipped with sideboards to afford protection from falling objects.

(c) When necessary for the safety of employees, provisions shall be made for stopping objects other than bulk commodities at the delivery end of the chute.

(d) Chutes and gravity conveyor roller sections shall be firmly placed and secured to prevent displacement, shifting, or falling.

(e) Gravity conveyors shall be of sufficient strength to safely support the weight of materials placed upon them. Conveyor rollers shall be installed in a manner that prevents them from falling or jumping out of the frame.

(f) Frames shall be kept free of burrs and sharp edges.

§ 1918.64 Powered conveyors.

(a) *Emergency stop.* Readily accessible stop controls shall be provided for use in an emergency. Whenever the operation of any power conveyor requires personnel to work in the immediate vicinity of the conveyor, the conveyor controls shall not be left unattended while the conveyor is in operation.

(b) *Guarding.* All conveyor and trimmer drives which create a hazard shall be adequately guarded.

(c) *Approved for location.* Electric motors and controls on conveyors and trimmers used to handle grain and exposed to grain dust shall be of the type approved by a nationally recognized testing laboratory for use in Class II, Division I locations. (See § 1910.7 of this chapter.)

(d) *Grain trimmer control box.* Each grain trimmer shall have a control box located on the weather deck in close proximity to the spout feeding the trimmer.

(e) *Grain trimmer power cable.* Power cables between the deck control box and the grain trimmer shall be used only in continuous lengths without splice or tap between connections.

(f) *Portable conveyors.* Portable conveyors shall be stable within their operating ranges. When used at variable fixed levels, the unit shall be secured at the operating level.

(g) *Delivery and braking.* When necessary for the safety of employees, provisions shall be made for braking objects at the delivery end of the conveyor.

(h) *Electric brakes.* Conveyors using electrically released brakes shall be so constructed that the brakes cannot be released until power is applied, and that the brakes are automatically engaged if the power fails or the operating control is returned to the "stop" position.

(i) *Starting powered conveyors.* Powered conveyors shall not be started until all employees are clear of the conveyor or have been warned that the conveyor is about to start.

(j) *Loading and unloading.* The area around conveyor loading and unloading points shall be kept clear of obstructions during conveyor operations.

(k) *Lockout/tagout.* (1) Conveyors shall be stopped and their power sources locked out and tagged out during maintenance, repair, and servicing, unless power is necessary for testing or for making minor adjustments.

(2) The starting device shall be locked out and tagged out in the stop position before an attempt is made to remove the cause of a jam or overload of the conveying medium.

(l) *Safe practices.* (1) Only designated persons shall operate, repair or service powered conveyors.

(2) The employer shall direct employees to stay off operating conveyors.

(3) Conveyors shall be operated only with all overload devices, guards and safety devices in place and operable.

§ 1918.65 Mechanically powered vehicles used aboard vessels.

(a) *Applicability.* This section applies to every type of mechanically powered vehicle used for material or equipment handling aboard a vessel.

(b) *General.* (1) Modifications, such as adding counterweights that might affect the vehicle's capacity or safety, shall not be performed without either the manufacturer's prior written approval or the written approval of a professional engineer experienced with the equipment, who has consulted with the manufacturer, if available. Capacity, operation and maintenance instruction plates, tags or decals shall be changed to conform to the equipment as modified.

(2) Rated capacities, with and without removable counterweights, shall not be exceeded. Rated capacities shall be marked on the vehicle and shall be visible to the operator. The vehicle weight, with and without counterweight, shall be similarly marked.

(3) If loads are lifted by two or more trucks working in unison, the total weight shall not exceed the combined safe lifting capacity of all trucks.

(c) *Guards for fork lift trucks.* (1) Except as noted in paragraph (c)(5) of this section, fork lift trucks shall be equipped with overhead guards securely attached to the machines. The guard shall be of such design and construction as to protect the operator from boxes, cartons, packages, bagged material, and other similar individual items of cargo which may fall from the load being handled or from stowage.

(2) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed 6 inches (15.2 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled through the guard.

(3) Overhead guards shall be built so that failure of the vehicle's mast tilting mechanism will not displace the guard.

(4) Overhead guards shall be large enough to extend over the operator during all truck operations, including forward tilt.

(5) An overhead guard may be removed only when it would prevent a truck from entering a work space and if the operator is not exposed to low overhead obstructions in the work space.

(6) Where necessary to protect the operator, fork lift trucks shall be fitted with a vertical load backrest extension to prevent the load from hitting the mast when the mast is positioned at maximum backward tilt. For this purpose, a "load backrest extension" means a device extending vertically from the fork carriage frame to prevent raised loads from falling backward.

(d) *Guards for bulk cargo-moving vehicles.* (1) Every crawler type, rider operated, bulk cargo-moving vehicle shall be equipped with an operator's guard of such design and construction as to protect the operator, when seated, against injury from contact with a projecting overhead.

(2) Guards and their attachment points shall be so designed as to be able to withstand, without excessive deflection, a load applied horizontally at the operator's shoulder level equal to the drawbar pull of the machine.

(3) Guards shall not be required when the vehicle is used in situations in which the possibility of the seated operator coming in contact with projecting overheads does not exist.

(4) Bulk cargo-moving vehicles shall be equipped with roll-over protection of such design and construction as to minimize the possibility of the operator being crushed as a result of a roll-over or upset.

(e) *Approved vehicle.* (1) "Approved power-operated vehicle" means one listed as approved for the intended use or location by a nationally recognized testing laboratory.

(2) Approved vehicles shall bear a label or other identification indicating testing laboratory approval.

(3) When the atmosphere in an area is hazardous and the provisions of U.S. Coast Guard regulations 49 CFR 176.78 do not apply, only approved power-operated vehicles shall be used.

(f) *Maintenance.* (1) Mechanically powered vehicles shall be maintained in safe working order. Safety devices shall not be removed or made inoperative except as otherwise provided in this section. Vehicles with a fuel system leak or any other safety defect shall not be operated.

(2) Braking systems or other mechanisms used for braking shall be operable and in safe condition.

(3) Replacement parts whose function might affect operational safety shall be equivalent in strength and performance capability to the original parts which they replace.

(4) Repairs to the fuel and ignition systems of mechanically powered vehicles which involve fire hazards shall be conducted only in locations designated as safe for such repairs.

(5) Batteries on all mechanically powered vehicles shall be disconnected during repairs to the primary electrical system unless power is necessary for testing and repair. On vehicles equipped with systems capable of storing residual energy, that energy shall be safely discharged before work on the primary electrical system begins.

(6) Only designated persons shall perform maintenance and repair.

(g) *Parking brakes.* All mechanically powered vehicles purchased after [insert effective date of the Final Rule] shall be equipped with parking brakes.

(h) *Operation.* (1) Only stable and safely arranged loads within the rated capacity of the mechanically powered vehicle shall be handled.

(2) The employer shall direct drivers to ascend and descend grades slowly.

(3) If the load obstructs the forward view, the employer shall direct drivers to travel with the load trailing.

(4) Steering knobs shall not be used unless the vehicle is equipped with power steering.

(5) When mechanically powered vehicles use cargo lifting devices that have a means of engagement hidden from the operator, a means shall be provided to enable the operator to determine that the cargo has been engaged.

(6) No load on a mechanically powered vehicle shall be suspended or swung over any employee.

(7) When mechanically powered vehicles are used, provisions shall be made to ensure that the working surface can support the vehicle and load, and that hatch covers, truck plates, or other temporary surfaces cannot be dislodged by movement of the vehicle.

(8) When mechanically powered vehicles are left unattended, load-engaging means shall be fully lowered, controls neutralized, brakes set and power shut off. Wheels shall be blocked or curbed if the vehicle is on an incline.

(9) When lift trucks or other mechanically powered vehicles are being operated on open deck type barges, the edges of the barges shall be guarded by railings, sideboards, timbers, or other means sufficient to prevent vehicles from rolling overboard. When such vehicles are operated on covered lighters where door openings other than those being used are left open, means shall be taken to prevent vehicles from rolling overboard through such openings.

(10) Unauthorized personnel shall not ride on mechanically powered vehicles. A safe place to ride shall be provided when riding is authorized.

(11) An employee may be elevated by fork lift trucks only when a platform is secured to the lifting carriage or forks. The platform shall meet the following requirements:

(i) The platform shall have a railing complying with § 1917.112(c) of this chapter.

(ii) The platform shall have toeboards complying with § 1917.112(d) of this chapter, if tools or other objects could fall on employees below.

(iii) When the truck has controls which are elevated with the lifting carriage, means shall be provided for employees on the platform to shut off power to the vehicle.

(iv) Employees on the platform shall be protected from exposure to moving truck parts.

(v) The platform floor shall be skid resistant.

(vi) A truck operator shall be at the truck's controls when employees are elevated, unless the truck's controls are elevated with the lifting carriage.

(vii) While an employee is elevated the truck may be moved only to make minor placement adjustments.

§ 1918.66 Cranes and derricks other than vessel's gear.

(a) *General.* The following requirements shall apply to the use of cranes and derricks brought aboard vessels for the purpose of conducting longshoring operations. They shall not apply to cranes and derricks forming part of a vessels permanent equipment.

(1) *Certification.* Cranes and derricks shall be certificated in accordance with part 1919 of this chapter.

(2) *Posted weight.* The crane weight shall be posted on all cranes hoisted aboard vessels for temporary use.

(3) *Rating chart.* All cranes and derricks having ratings that vary with boom length, radius (outreach) or other variables shall have a durable rating chart visible to the operator, covering the complete range of the manufacturer's (or design) capacity ratings. The rating chart shall include all operating radii (outreach) for all permissible boom lengths and jib lengths, as applicable, with and without outriggers, and alternate ratings for optional equipment affecting such ratings. Precautions or warnings specified by the owner or manufacturer shall be included along with a chart.

(4) *Rated loads.* The manufacturer's (or design) rated loads for the conditions of use shall not be exceeded.

(5) *Change of rated loads.* Designated working loads shall not be increased beyond the manufacturer's ratings or original design limitations unless such increase receives the manufacturer's approval. When the manufacturer's services are not available or where the equipment is of foreign manufacture, engineering design analysis shall be performed or approved by a person accredited for certificating the equipment under part 1919 of this chapter. Engineering design analysis shall be performed by a registered professional engineer competent in the field of cranes and derricks. Any structural changes necessitated by the change in rating shall be carried out.

(6) *Radius indicator.* When the rated load varies with the boom radius, the crane or derrick shall be fitted with a boom angle or radius indicator visible to the operator.

(7) *Operator's station.* The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools, and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(8) *Counterweights or ballast.* Cranes shall be operated only with the specified type and amount of ballast or counterweights. Ballast or counterweights shall be located and secured only as provided in the manufacturer's or design specifications, which shall be available for inspection.

(9) *Outriggers.* Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available for inspection. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

(10) *Exhaust gases.* Engine exhaust gases shall be discharged away from the normal position of crane operating personnel.

(11) *Electrical/Guarding.* Electrical equipment shall be so located or enclosed that live parts will not be exposed to accidental contact. Designated persons may work on energized equipment only if necessary during inspection, maintenance, or repair, otherwise the equipment shall be stopped and their power sources locked out and tagged out.

(12) *Fire extinguisher.* (i) At least one portable approved or listed fire extinguisher of at least a 5–BC rating or equivalent shall be accessible in the cab of the crane or derrick.

(ii) No portable fire extinguisher using carbon tetrachloride or chlorobromomethane extinguishing agents shall be used.

(13) *Rope on drums.* At least three full turns of rope shall remain on ungrooved drums, and two turns on grooved drums, under all operating conditions. Wire rope shall be secured to drums by clamps, U-bolts, shackles or equivalent means. Fibre rope fastenings are prohibited.

(14) *Brakes.* (i) Each independent hoisting unit of a crane shall be equipped with at least one holding brake, applied directly to the motor shaft or gear train.

(ii) Each independent hoisting unit of a crane shall, in addition to the holding brake, be equipped with a controlled braking means to control lowering speeds.

(iii) Holding brakes for hoist units shall have not less than the following percentage of the rated load hoisting torque at the point where the brake is applied:

(A) 125 percent when used with a controlled braking means.

(B) 100 percent when used with a mechanically controlled braking means.

(iv) All power control braking means shall be capable of maintaining safe lowering speeds of rated loads.

(15) *Operating controls.* Crane and derrick operating controls shall be clearly marked, or a chart indicating their function shall be posted at the operator's position.

(16) *Booms.* Cranes with elevatable booms and without operable automatic limiting devices shall be provided with boom stops if boom elevation can exceed maximum design angles from the horizontal.

(17) *Foot pedals.* Foot pedals shall have a non-skid surface.

(18) *Access.* Ladders, stairways, stanchions, grab irons, foot steps or equivalent means shall be provided as necessary to ensure safe access to footwalks, cab platforms, the cab and any portion of the superstructure which employees must reach.

(b) *Operations—(1) Use of cranes together.* When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the load and movements to be made.

(2) *Guarding of swing radius.* Accessible areas within the swing radius of the body of a revolving crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure or between parts of the crane.

(3) *Prohibited usage.* (i) Equipment shall not be used in a manner that exerts sideloading stresses upon the crane or derrick boom.

(ii) No crane or derrick having a visible or known defect that may affect safe operation shall be used.

(4) *Unattended cranes.* The following steps shall be taken before leaving a crane unattended between work periods:

(i) Suspended loads, such as those hoisted by lifting magnets or clamshell buckets, shall be landed unless the storage position or maximum hoisting of the suspended device will provide equivalent safety;

(ii) Clutches shall be disengaged;

(iii) The power supply shall be shut off;

(iv) The crane shall be secured against accidental travel; and

(v) The boom shall be lowered or secured against movement.

(c) *Protection for employees being hoisted.* (1) No employee shall be hoisted by the load hoisting apparatus of a crane or derrick except on a platform meeting the following requirements:

(i) Enclosed by a railing or other means providing protection equivalent of that described in § 1917.112(c) of this chapter. If equipped with open railings, the platform shall be fitted with toe boards;

(ii) Having a safety factor of four based on ultimate strength;

(iii) Bearing a plate or permanent marking indicating maximum load rating, which shall not be exceeded, and the weight of the platform itself;

(iv) Equipped with a device to prevent access doors, when used, from opening accidentally;

(v) Equipped with overhead protection for employees on the platform if they are exposed to falling objects or overhead hazards;

(vi) Secured to the load line by means other than wedge and socket attachments, unless the free (bitter) end of the line is secured back to itself by a clamp placed as close above the wedge as possible.

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

(3) All cranes and derricks used to hoist personnel shall be equipped with an anti-two blocking device.

(4) Variable radius booms of a crane or derrick used to hoist personnel shall be so constructed or secured as to prevent accidental boom movement.

(5) Platforms or devices used to hoist employees shall be inspected for defects before each day's use and shall be removed from service if defective.

(6) Employees being hoisted shall remain in continuous sight of and communication with the operator or signalman.

(7) Operators shall remain at the controls when employees are hoisted.

(8) Cranes shall not travel while employees are hoisted, except in emergency or in normal tier to tier transfer of employees during container operations.

(d) *Routine inspection.* (1) Designated persons shall visually inspect each crane and derrick on each day of use for defects in functional operating components and shall report any defect found to the employer. The employer shall inform the operator of the findings.

(2) A designated person shall thoroughly inspect all functional components and accessible structural features of each crane or device at monthly intervals.

(3) Any defects found during such inspections which may create a safety hazard shall be corrected before further equipment use. Repairs shall be performed only by designated persons.

(4) A record of monthly inspections shall be maintained for six months in or on the crane or derrick or at the terminal.

(e) *Protective devices.* (1) When exposed moving parts such as gears, chains and chain sprockets present a hazard to employees during crane and derrick operations, those parts shall be securely guarded.

(2) Crane hooks shall be latched or otherwise secured to prevent accidental load disengagement.

§ 1918.67 Notifying the ship's officers before using certain equipment.

(a) The employer shall notify the officer in charge of the vessel before bringing aboard ship internal combustion or electric powered tools, equipment or vehicles.

(b) The employer shall also notify the officer in charge of the vessel before using the ship's electric power for the operation of any electric tools or equipment.

§ 1918.68 Grounding.

The frames of portable electrical equipment and tools, other than double insulated tools and battery operated tools shall be grounded through a separate equipment conductor run with or enclosing the circuit conductors.

§ 1918.69 Tools.

(See Scope and Application, § 1918.1).

Subpart H—Handling Cargo

§ 1918.81 Slinging.

(a) Drafts shall be safely slung before being hoisted. Loose dunnage or debris hanging or protruding from loads shall be removed.

(b) Cargo handling bridles, such as pallet bridles, which are to remain attached to the hoisting gear while hoisting successive drafts, shall be attached by shackles, or other positive means shall be taken to prevent them from being accidentally disengaged from the cargo hook.

(c) Drafts of lumber, pipe, dunnage and other pieces, the top layer of which is not bound by the sling, shall be slung in such a manner as to prevent sliders. Double slings shall be used on unstrapped dunnage, except when, due to the size of hatch or deep tank openings, it is impractical to use them.

(d) Case hooks shall be used only with cases designed to be hoisted by these hooks.

(e) Bales of cotton, wool, cork, wood pulp, gunny bags or similar articles shall be hoisted only by straps strong enough to support the weight of the bale. At least two hooks, each in a separate strap, shall be used.

(f) Unitized loads bound by bands or straps may be hoisted by the banding or strapping only if the banding or strapping is suitable for hoisting and is strong enough to support the weight of the load.

(g) Additional means of hoisting shall be employed to ensure safe lifting of unitized loads having damaged banding or strapping.

(h) Loads requiring continuous manual guidance during handling shall be guided by guide ropes (tag lines) that are long enough to control the load.

(i) No draft shall be hoisted unless the winch or crane operator(s) can clearly see the draft itself or see the signals of a signalman in observation of the draft's movement.

(j) Intermodal containers shall be handled in accordance with § 1918.85.

(k) The employer shall require that employees stay clear of the area beneath

overhead drafts or descending lifting gear.

(l) Employees shall not be permitted to ride the hook or the load. Except that: As provided for in § 1918.85(g).

§ 1918.82 Building drafts.

(a) Drafts shall be built or means shall be taken to prevent cargo from falling from them.

(b) Buckets and tubs used in handling bulk or frozen cargo shall not be loaded above their rims.

§ 1918.83 Stowed cargo; tiering and breaking down.

(a) When necessary to protect personnel working in a hold, stowed cargo in ship's holds which is likely to shift or roll shall be secured or blocked.

(b) In breaking down stowed cargo, precautions shall be taken to prevent remaining cargo from falling.

(c) Employees trimming bulk cargo shall be checked in and out by the foreman. Before securing any reefer compartment, a check shall be made to ensure that no employee remains inside. Frequent checks shall be made to ensure the safety of any employee working alone in a tank or cargo compartment.

§ 1918.84 Bulling cargo.

(a) Bulling cargo shall be done with the bull line led directly from the heel block. However, bulling may be done from the head of the boom when the nature of the cargo and the surface over which it is dragged are such that the load cannot be stalled, or when the winch actually does not have sufficient strength, with the purchase used, to overload the boom.

(b) Snatch blocks shall be used to provide a fair lead for the bull line so as to avoid unnecessary dragging of the bull line against coamings and obstructions.

(c) Snatch blocks shall not be used with the point of the hook resting on the flange of a beam, but shall be hung from padeyes, straps, or beam clamps. Snatch blocks or straps shall not be made fast to batten cleats or other insecure fittings.

(d) Beam frame clamps shall be so secured as to prevent their slipping, falling, or being pulled from their stationary attachment.

(e) Falls led from cargo booms of vessels shall not be used to move scows, lighters or railcars.

§ 1918.85 Containerized cargo operations.

(a) *Container markings.* Every intermodal container shall be legibly and permanently marked with:

(l) The weight of the container when empty, in pounds;

(2) The maximum cargo weight the container is designed to carry, in pounds; and

(3) The sum of the weight of the container and the maximum cargo weight, in pounds.

(b) *Container weight.* No container shall be hoisted by any lifting appliance unless the following conditions have been met:

(1) The employer shall ascertain from the carrier whether a container to be hoisted is loaded or empty. Empty containers shall be identified before loading or discharge in such a manner as will inform every supervisor and foreman on the site and in charge of loading or discharging, or every crane or other hoisting equipment operator and signalman, if any, that such container is empty. Methods of identification may include cargo plans, manifests, or markings on the container.

(2) In the case of a loaded container:

(i) The actual gross weight shall be plainly marked so as to be visible to the crane or other hoisting equipment operator or signalman, or to every supervisor or foreman on site and in charge of the operation; or

(ii) The cargo stowage plan or equivalent permanently recorded display serving the same purpose, containing the actual gross weight and the serial number or other positive identification of that specific container, shall be provided to the crane or other hoisting equipment operator and signalman, if any, and to every supervisor and foreman on site and in charge of the operation.

(3) Every outbound container which is received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain the actual gross weight, either at the terminal or elsewhere, before being hoisted.

(4) (i) When container weighing scales are located at a marine terminal, any outbound container with a load consolidated at that terminal shall be weighed to obtain the actual weight before being hoisted.

(ii) If the terminal has no scales, the actual gross weight may be calculated on the basis of the container's contents and the container's empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation, and the date.

(5) Open top vehicle carrying containers, and those built specifically and used solely for the carriage of compressed gases, are excepted from paragraphs (b)(3) and (b)(4) of this section.

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section provided that:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside in such a manner that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing, by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the purpose of the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is located.

(c) *Overloaded containers.* No container or containers shall be hoisted if its actual gross weight exceeds the weight marked as required in paragraph (a)(3) of this section, or if it exceeds the capacity of the crane or other lifting appliance intended to be used.

(d) *Container inspection.* (1) Containers shall be inspected for any visible defects in structural members and fittings which would make the handling of such container unsafe.

(2) Any container found to have such a defect shall either be handled by a special means to assure safe handling; or shall be emptied before handling.

(e) *Suspended containers.* The employer shall direct employees to stay clear of the area beneath a suspended container.

(f) *Lifting fittings.* Containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (f)(1) through (f)(3) of this section, except when damage to an intermodal container makes special means of handling necessary.

(1) Loaded intermodal containers of 20 feet (6.1 m) or more shall be hoisted as follows:

(i) When hoisted by the top fittings, the lifting forces shall be applied vertically from at least four such fittings.

(ii) When hoisted from bottom fittings, the hoisting connections shall bear on the fittings only, making no other contact with the container. The angles of the four bridle legs shall not be less than 30° to the horizontal in the case of 40 foot (12.2 m) containers; 37° in the case of 30 foot (9.1 m) containers; and 45° in the case of 20 foot (6.1 m) containers.

(iii) Lifting containers by fork lift trucks or grappling arms from above or from one side may be done only if the container is designed for this type of handling.

(iv) Other means of hoisting may be used only if the containers and hoisting means are designed for such use.

(2)(i) When using intermodal container spreaders that employ lanyards for activation and load disengagement, all possible precautions shall be taken to prevent accidental release of the load.

(ii) Intermodal container spreader twistlock systems shall be designed and used so that a suspended load cannot accidentally be released.

(g) *Safe container top access.* A safe means of access and egress shall be provided for each employee required to work atop an intermodal container. Unless ladders are used for access, such means shall comply with the requirements of § 1917.45(j) of this chapter.

(h) *Employee hoisting prohibition.* Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

(i) *Portable ladder access.* When other safer means are available, portable ladders shall not be used in gaining access to container stacks more than two containers high.

(j) *Container top safety.* (1) Employees shall be protected from fall hazards [3] in the following manner:

(i) After June 2, 1997, employees shall not go on top of containers to perform work, notably coning and deconing, which can be eliminated through the proper use of positive container securing devices;

(ii) Work which requires employees to go on top of container tops shall be eliminated, to the extent feasible, through the proper use of positive container securing devices, which includes, but is not limited to, semi-automatic twist locks and cell guides;

(iii) A fall protection system meeting the requirements of paragraph (k) of this section shall be implemented to protect the following employees:

(A) Employees engaged in work on containers that is not described in paragraph (j)(1)(ii) of this section [4] that presents exposure to fall hazards; or

(B) Employees engaged in work on containers that are not being handled by container gantry cranes.

(2) Compliance with paragraph (j)(1)(ii) of this section shall be considered feasible when containers are being worked by container gantry cranes.

(3) Where the employer determines in the particular case that an employee will be exposed to a fall hazard but that the use of a fall protection system meeting the requirements of paragraph (k) of this section is not feasible [5] the employer shall alert the exposed employee about the hazards involved and instruct the employee how to minimize the hazard.

(k) *Fall protection.* When fall protection systems required by paragraph (j) of this section are employed, the following shall apply:

(1) Each fall protection system component, except anchorages, shall have fall arrest/restraint as its only use.

(2) Each fall protection system subjected to impact loading shall be immediately withdrawn from service and not used again until inspected and determined by a designated person to be undamaged and suitable for use.

(3) Each fall protection system shall be rigged to minimize free-fall distance so that the employee will not contact any lower level stowage or vessel structure.

(4) Each fall protection system adopted for use shall have an energy absorbing mechanism that will produce an arresting force on an employee of not greater than 1800 pounds (8 kN).

(5) Each fall protection systems' hardware shall be designed and utilized so as to prevent accidental disengagement.

(6) Each fall protection systems' fixed anchorages shall each be capable of sustaining a force of 5,000 (22.2 kN) pounds or be certified as capable of sustaining at least twice the potential impact load of an employee's fall. Such certification must be made by a registered professional engineer. When more than one employee is attached to an anchorage, the foregoing limits shall be multiplied by the number of employees attached.

(7) When "live" (activated) container gantry crane lifting beams or attached devices are used as anchorage points the following requirements apply:

(i) The crane shall be placed into a "slow" speed mode;

(ii) The crane shall be equipped with a remote shut-off switch, capable of stopping all crane functions, in the control of employee(s) attached to the beam; and

(iii) A visible or audible indicator shall be present to inform the same employee(s) when the remote shut-off is operational.

(8) Fall protection system components shall be certified as a unit of being capable of sustaining at least twice the potential impact load of an employee's fall. Such certification must be made by a registered professional engineer. When more than one employee is attached to an anchorage, the foregoing limits shall be multiplied by the number of employees attached.

(9) Each fall protection system shall incorporate the use of a full body harnesses.

(10) Each device, such as a safety cage, that is used to transport employee(s) by being attached to a container gantry crane spreader, shall have a secondary means of attachment in place and engaged to prevent accidental disengagement.

(11) Each fall protection system shall be inspected prior to each day's use by a designated person. Any defective components shall be removed from service.

(12) Before using any fall protection system, the employee shall be trained in the use and application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(13) The employer shall establish and implement a procedure to safely retrieve personnel in case of a fall.

(l) *Working along unguarded edges.* Fall protection meeting the requirements of paragraph (k) of this section must be provided when container operations require employees to work along unguarded edges (other than on the top of a container), where the fall distance is greater than 8 feet (2.4 m).

§ 1918.86 Roll-on roll-off (RO-RO) operations.

(See also § 1918.24.)

(a) *Traffic control system.* An organized system of vehicular and pedestrian traffic control shall be established and maintained at each entrance/exit ramp and on ramps within the vessel as traffic flow warrants.

(b) *Ramp load limit.* Ramps shall be plainly marked with their load capacity. The marked capacity shall not be exceeded.

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[3] A fall hazard shall exist whenever employees are working within 3 feet (.9 m) of the unprotected edge of a work surface that is 10 or more feet (3 m) above the adjoining surface and twelve (12) inches (.3 m) or more, horizontally, from the adjacent surface; or weather conditions may impair vision or sound footing of workers on top of containers.

[4] Examples of work that may not be eliminated by positive container securing devices, where employees may be required to work on top of containers include, but are not limited to: installing or removing bridge clamps; hooking up or detaching overheight containers; or freeing a jammed semi-automatic twist lock.

[5] See non-mandatory Appendix III to this part for examples of situations where the use of a fall protection system may prove infeasible.

(c) *Pedestrian traffic.* Stern and side port ramps also used for pedestrian access shall meet the requirements of § 1918.21. Such ramps shall provide a physical separation between pedestrian and vehicular routes. When the design of the ramp prevents physical separation, a signalperson shall direct traffic and shall not allow concurrent use.

(d) *Ramp maintenance.* Ramps shall be properly maintained and secured.

(e) *Hazardous routes.* Prior to the start of Ro-Ro operations the employer shall ascertain any hazardous routes or areas that could be mistaken for normal drive-on/drive-off routes. Such hazardous routes shall be clearly identified and barricaded.

(f) *Air brake connections.* Each tractor shall have all air lines connected when pulling trailers equipped with air brakes and shall have the brakes tested before commencing operations.

(g) *Trailer load limits.* Flat bed and low boy trailers shall be marked with their cargo capacities and shall not be overloaded.

(h) *Cargo weights.* Cargo to be handled via a Ro-Ro ramp shall have its weight plainly marked in pounds (kilograms). Alternatively, the cargo stow plan or equivalent record containing the actual gross weight of the load may be used to determine the weight of the cargo.

(i) *Tractors.* Tractors used in Ro-Ro operations shall have:

(1) sufficient power to ascend ramp inclines safely; and

(2) sufficient braking capacity to descend ramp inclines safely.

(j) *Safe speeds.* Power driven vehicles used in Ro-Ro operations shall be operated at safe speeds compatible with prevailing conditions.

(k) *Ventilation.* Internal combustion engine driven vehicles shall be operated only where adequate ventilation exists or is provided. (Air contaminant requirements are found in § 1918.94 and part 1910, subpart Z of this chapter.)

(l) *Securing cargo.* Cargo loaded or discharged during Ro-Ro operations shall be secured to prevent sliding loads.

(m) *Authorized personnel.* Only authorized persons shall be permitted on any deck while loading or discharging operations are being conducted. Such authorized persons shall be equipped with high visibility vests (or equivalent protection).

(n) *Signalling requirement.* When a driver is maneuvering a vehicle into a stowage position while other personnel, such as lashers, are working in the adjacent vicinity:

(1) the driver shall be under the direction of a signaller; and

(2) No driver shall be signalled to advance or reverse motion while any personnel are in positions where they could be struck.

§ 1918.87 Ship's cargo elevators.

(a) *Safe working load.* The safe working loads of ship's cargo elevators shall be ascertained and adhered to.

(b) *Load distribution.* Loads shall be evenly distributed on the elevator's platform.

(c) *Elevator personnel restrictions.* Drivers of vehicles who remain at the controls of those vehicles shall be the only persons permitted to travel on the elevator's platform with the vehicle.

(d) *Open deck barricades.* During elevator operation, each opened deck which presents a fall hazard to employees shall be effectively barricaded.

§ 1918.88 Log operations.

(See also § 1918.38.)

(a) *Working in holds.* In holds where logs are being loaded, no employee shall remain in spaces for the placement of logs using dumper devices when the possibility of logs striking, rolling upon, or pinning them exists.

(b) *Footwear.* The employer shall provide employees that are working logs appropriate footwear, such as spiked shoes.

(c) *Lifelines.* When employees are working on log booms or cribs, lifelines shall be furnished and hung overside to the water's edge.

(d) *Jacob's ladder.* When a log boom is being worked, a Jacob's ladder meeting the requirements of § 1918.22 shall be provided for each gang working alongside unless other safe means of access are provided. However, no more than two Jacob's ladders are required for any single log boom being worked.

(e) *Life-ring.* When working a log boom alongside a ship, a U.S. Coast Guard approved 30 inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

(f) *Rescue boat.* When employees are working on rafts or booms, a rescue boat shall be immediately available.

§ 1918.89 Hazardous cargo.

(See also § 1918.2(j).)

(a) *Employer preparations.* Before cargo handling operations begin, the employer shall ascertain whether any hazardous cargo is to be handled and shall determine the nature of the hazard. The employer shall inform employees of the nature of the hazard and any special procedures to be taken to prevent employee exposure, and shall instruct employees to stay clear of and to notify supervision of any leaks or spills.

(b) *Handling hazardous cargo.* Hazardous cargo shall be slung and secured so that neither the draft nor individual packages can fall as a result of tipping the draft or slacking of the supporting gear.

(c) *Emergency procedures.* If hazardous cargo is spilled or its packaging leaks, employees shall be removed from the affected area until the employer has ascertained the specific hazards; has provided any equipment, clothing and ventilation, and fire protection equipment necessary to eliminate or protect against the hazards; and has instructed cleanup employees in a safe method of cleaning up and disposing of a spill and disposing of leaking containers. Actual cleanup or disposal work shall be conducted under the supervision of a designated person.

Subpart I—General Working Conditions

§ 1918.90 Hazard communication.

(See § 1918.1(b)(6).)

§ 1918.91 Housekeeping.

(a) *General.* Active work areas shall be kept free of equipment and materials not in use, and clear of debris, projecting nails, strapping and other sharp objects not necessary to the work in progress.

(b) *Slippery surfaces.* The employer shall eliminate conditions causing slippery walking and working surfaces in immediate areas used by employees.

(c) *Free movement of drafts.* Dunnage shall not be placed at any location where it interferes with the free movement of drafts.

(d) *Dunnage height.* Dunnage racked against sweat battens or bulkheads shall not be used when the levels of such racks are above the safe reach of employees.

(e) *Coaming clearance.* Dunnage, hatch beams, tarpaulins or gear not in use shall be stowed no closer than 3 feet (.91 m) to the port and starboard sides of the weather deck hatch coaming.

(f) *Nails.* (1) Nails which are protruding from shoring or fencing in the immediate work areas shall be rendered harmless.

(2) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the immediate work area, or, if left in the area, the nails shall be rendered harmless.

(g) *Ice aloft.* Employees shall be protected from ice which may fall from aloft.

§ 1918.92 Illumination.

(a) *Walking and working areas.* Walking, working, and climbing areas shall be illuminated. Unless conditions described in the regulations of the U.S. Coast Guard (33 CFR 154.570) exist in the case of specific operations, illumination for cargo transfer operations shall be of an average minimum light intensity of 5-foot-candles (54 lux). Where occasional work tasks require more light than that which is consistently and permanently provided, supplemental lighting shall be used.

(b) *Intensity measurement.* The lighting intensity shall be measured at the task/working surface, in the plane in which the task/working surface is present.

(c) *Arrangement of lights.* Lights shall be arranged so that they do not shine into the eyes of winch-drivers, crane operators or hatchtenders. On Ro-Ro ships, stationary lights shall not shine directly into the eyes of drivers.

(d) *Portable lights.* Portable lights shall meet the following requirements:

(1) Portable lights shall be equipped with substantial reflectors and guards to prevent materials from coming into contact with the bulb.

(2) Flexible electric cords used with temporary lights shall be designed by the manufacturer for hard or extra-hard usage. Temporary and portable lights shall not be suspended by their electric cords unless the cords and lights are designed for this means of suspension. Connections and insulation shall be maintained in safe condition.

(3) Electric conductors and fixtures for portable lights shall be so arranged as to be free from contact with drafts, running gear, and other moving equipment.

(4) Portable cargo lights furnished by the employer for use aboard vessels shall be listed as approved for marine use by the U.S. Coast Guard or by a nationally recognized testing laboratory.

(e) *Entry into darkened areas.* Employees shall not be permitted to enter dark holds, compartments, decks or other spaces without a flashlight or other portable light. The use of matches or open flame lights is prohibited.

§ 1918.93 Hazardous atmospheres and substances.

(See § 1918.2(j).)

(a) *Purpose and scope.* This section covers areas in which the employer is aware that a hazardous atmosphere or substance may exist, except where one or more of the following sections or sub sections apply: Section 1918.89, Hazardous cargo; § 1918.94(a), Carbon monoxide; § 1918.94(b), Fumigated grains; § 1918.94(c), Fumigated tobacco; § 1918.94(d), Other fumigated cargoes; § 1918.94(e), Catch of Menhaden and similar species of fish.

(b) *Determination of hazard.* (1) When the employer is aware that a space on a vessel contains or has contained a hazardous atmosphere, a designated and appropriately equipped persons shall test the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

(2) Records of results of any tests required by this section shall be maintained for at least 30 days.

(c) *Testing during ventilation.* When mechanical ventilation is used to maintain a safe atmosphere, tests shall be made by a designated person to ensure that the atmosphere is not hazardous.

(d) *Entry into hazardous atmospheres.* Only designated person shall enter hazardous atmospheres, in which case the following provisions shall apply:

(1) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirement of subpart J of this part;

(2) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers, similarly equipped and instructed, shall continuously monitor the activity of employees within such space;

(3) Except for emergency or rescue operations, employees shall not enter into any atmosphere which has been identified as flammable or oxygen deficient (less than 19.5% oxygen). Persons who may be required to enter flammable or oxygen deficient atmospheres in emergency operations shall be instructed in the dangers attendant to those atmospheres and instructed in the use of self-contained breathing apparatus, which shall be utilized.

(4) To prevent inadvertent employee entry into spaces that have been identified as having hazardous, flammable or oxygen deficient atmospheres, appropriate warning signs or equivalent means shall be posted at all means of access to those spaces.

(e) *Asbestos cargo leak.* When the packaging of asbestos cargo leaks, spillage shall be cleaned up by designated employees protected from the harmful effects of asbestos as required by § 1910.1001 of this chapter.

§ 1918.94 Ventilation and atmospheric conditions.

(See also § 1918.2(j).)

(a) *Ventilation with respect to carbon monoxide.* (1)(i) When internal combustion engines exhaust into a hold, intermediate deck, or any other compartment, the employer shall see that tests of the carbon monoxide content of the atmosphere are made with such frequency to ensure that dangerous concentrations do not exceed allowable limits. Such tests shall be made in the area in which employees are working by persons competent in the use of the test equipment and procedures. If operations are located in a deep tank or refrigerated compartment, the first test shall be made within one half hour of the time the engine starts. In order to determine the need for further testing, the initial test in all other cargo handling areas shall be taken no later than one hour after the time the engine starts.

(ii) The carbon monoxide content of the atmosphere in a compartment, hold, or any enclosed space shall be maintained at not more than 35 parts per million (ppm) (0.0035%) as an 8-hour time weighted average and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 ppm (0.01%). The short term exposure limit in outdoors, non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

(A) The term *time weighted average* means that for any period of time in which the concentration exceeds 35 parts per million, it shall be maintained at a corresponding amount below 35 parts per million for an equal period of time.

(B) The formula for "time weighted average" for an 8-hour work shift is as follows:

$$E=(C_aT_a+C_bT_b+. \ . \ .C_nT_n)/8$$

Where: E is the equivalent exposure for the working shift. C is the concentration during any period of time T where the concentration remains constant. T is the duration in hours of the exposure at the concentration C.

(iii) When both natural ventilation and the vessel's ventilation system are inadequate to keep the carbon monoxide concentration within the allowable limits, the employer shall use supplementary means to bring such concentration within allowable limits, as determined by actual monitoring.

(2) A record of the date, time, location and results of the tests required by paragraph (a)(1) of this section shall be maintained for at least 30 days after the

work has been completed. Such records may be entered on any retrievable medium, and shall be available for inspection.

(3) The intakes of portable blowers and any exposed belt drives shall be guarded to prevent injury to employees.

(4) The frames of portable blowers shall be grounded at the source of the current by means of an equipment grounding conductor run with or enclosing the circuit conductors. When the vessel is the source of the current, the equipment grounding conductor shall be bonded to the structure of the vessel. Electric cords used shall be free from visible defects.

(b) *Fumigated grains.* (1) Before commencing to handle bulk grain in any compartment of a vessel in which employees will or may be present, the employer shall:

(i) ascertain from the elevator operator whether the grain has been or will be fumigated at the elevator; and

(ii) ascertain from the vessel's officers, agent, or other knowledgeable source whether those compartments, or any cargo within them that was loaded at a prior berth, have been treated with a fumigant or any other chemical.

(2) If such treatment has been carried out, or if there is reason to suspect that such treatment has been carried out, it shall be determined by atmospheric testing that the compartment's atmosphere is within allowable limits. (See paragraph (b)(3) of this section.)

(3) A test of the fumigant concentration in the atmosphere of the compartment shall be made after loading begins and before employees enter the compartment. Additional tests shall be made as often as necessary to ensure that hazardous concentrations do not develop.

(i) Tests for fumigant concentration shall be conducted by a designated person, who shall be thoroughly familiar with the characteristics of the fumigant being used, the correct procedure for measurement, the proper measuring equipment to be used, the manufacturer's recommendations and warnings, and the proper use of personal protective equipment employed to guard against the specific hazards.

(ii) A record of the date, time, location and results of the tests required by paragraph (b) of this section shall be maintained for at least 30 days after the work has been completed. Such records may be entered on any retrievable medium, and shall be available for inspection.

(iii) At any time the concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturer or by part 1910, subpart Z of this chapter, whichever is lower, all employees shall be removed from such compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is within allowable limits.

(iv) No employee shall be permitted to enter any compartment in which grain fumigation has been carried out, or any compartment immediately adjacent to such a compartment, until it has been determined by test that the atmosphere in the compartment to be entered is within allowable limits for entry.

(v) In the event a compartment containing a hazardous or unknown concentration of fumigants must be entered for the purpose of testing the atmosphere, or for emergency purposes, each employee entering shall be protected by respiratory protective equipment in accordance with the provisions of § 1918.102, and by any protective clothing or other personal protective equipment recommended by the fumigant manufacturer for protection against the particular hazards. At least two other employees shall be stationed outside the compartment as observers, to provide rescue services in the event of an emergency. The observers shall be equipped with similar personal protective equipment.

(vi) One or more employees on duty shall be equipped and trained to provide any specific emergency treatment stipulated for the particular fumigant.

(vii) Emergency equipment required by this subparagraph shall be readily accessible wherever fumigated grains are being handled.

(4) In the event that a compartment is treated for local infestation before loading grain by a chemical other than a fumigant, the employee applying the treatment, and any other employees entering the compartment, shall be provided with and required to use any personal protective equipment which may be recommended by the manufacturer of the product to protect them against the effects of exposure.

(c) *Fumigated tobacco.* The employer shall not load tobacco until the carrier has provided written notification as to whether or not the cargo has been fumigated. If break-bulk tobacco cargo has been treated with any toxic fumigant, loading shall not commence until written warranty has been received from the fumigation facility that the aeration of the cargo has been such to reduce the concentration of the fumigant to within allowable limits. Such notification and warranty shall be maintained for at least 30 days after the loading of the tobacco has been completed, and shall be available for inspection.

(d) *Other fumigated cargoes.* Before commencing to load fumigated cargo other than the cargo specifically addressed in paragraphs (b) and (c) of this section, the employer shall ascertain that such cargo does not contain a concentration of fumigants in excess of allowable limits found in subpart Z of part 1910 of this chapter

(e) *Grain dust.* When employees are exposed to concentrations of grain dusts in excess of allowable limits found in subpart Z of part 1910 of this chapter, they shall be protected by suitable respiratory protective equipment in accordance with the requirements of § 1918.102.

(f) *Catch of Menhaden and similar species of fish.* (1) The provisions of this paragraph shall not apply in the case of vessels having and utilizing refrigerated holds for the carriage of all cargo.

(2) After a vessel has arrived at berth for discharge of menhaden, but before personnel enter the hold, and as frequently thereafter as tests indicate to be necessary, tests shall be made of the atmosphere in the vessel's hold to ensure a safe work space. The tests shall be performed for the presence of hydrogen sulfide and for oxygen deficiency.

(3) Tests required by paragraph (f)(2) of this section shall be made by designated supervisory personnel, trained and competent in the nature of potential hazards and the use of test equipment and procedures.

(4) The hydrogen sulfide content of the atmosphere in a compartment, hold, or any enclosed space shall be maintained at not more than 10 parts per million (ppm) (0.0010%) as an 8-hour time weighted average. The short term exposure limit shall be 15 ppm (0.0015%) measured over a 15 minute period. The oxygen level must be maintained to at least 19.5 percent. Employees shall not be permitted in the hold unless these conditions are met and maintained.

§ 1918.95 Sanitation.

(a) *Washing and toilet facilities.* (1) Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the worksite. The number of toilet facilities shall be provided in accordance with the table found in this section. The facilities shall have:

(i) Running water, including hot and cold or tepid water at a minimum of one accessible location (when longshoring operations are conducted at locations without permanent facilities, potable

water may be provided in lieu of running water);

(ii) Soap;

(iii) Individual hand towels, clean individual sections of continuous toweling, or warm air blowers; and

(iv) Fixed or portable toilets in separate compartments with latch-equipped doors. Numbers of toilet facilities shall comply with the Toilet Facilities Table. Separate toilet facilities shall be provided for male and female employees except when toilet rooms will be occupied by only one person at a time.

(2) Washing and toilet facilities shall be regularly cleaned and maintained in good order.

TOILET FACILITIES TABLE

No. of employees	Minimum no. of facilities
20 or less	1 toilet seat.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more	1 toilet seat and 1 urinal per 50 workers.

(b) *Drinking water.* (1) Potable drinking water shall be accessible to employees at all times.

(2) Potable drinking water containers shall be clean, containing only water and ice, and shall be fitted with covers.

(3) Common drinking cups are prohibited.

(c) *Prohibited eating areas.* Consumption of food or beverages in areas where hazardous materials are stowed or being handled is prohibited.

(d) *Garbage and overboard discharges.* Work shall not be conducted in the immediate vicinity of uncovered garbage or in the way of overboard discharges from the vessel's sanitary lines unless employees are protected from the garbage or discharge by a baffle or splash boards.

§ 1918.96 Longshoring operations in the vicinity of maintenance and repair work.

(a) *Noise interference* (See also § 1918.1(b)(10)). Longshoring operations shall not be carried on when noise interferes with communications of warnings or instructions.

(b) *Falling objects.* Longshoring operations shall not be carried on in the hold or on deck beneath work being conducted overhead whenever such work exposes the employee to a hazard of falling objects.

(c) *Hot work.* Longshoring operations shall not be carried on where the employee is exposed to injurious light rays, hot metal, or sparks, as a result of welding or cutting.

(d) *Abrasive blasting and spray painting.* Longshoring operations shall not be carried on in the immediate vicinity of abrasive blasting or spray painting operations.

(e) *Non-ionizing radiation.* Longshoring operations shall not be carried on when there is a danger that non-ionizing radiation (electromagnetic radiation) from a vessel's radio or radar, or from radio or television transmitting towers ashore could harm employees that are involved in cargo handling operations.

§ 1918.97 First aid and lifesaving facilities.

(a) *Injury reporting.* The employer shall direct each employee to report every injury, regardless of severity, to the employer.

(b) *First aid.* A first aid kit shall be available at or near to each vessel being worked, and at least one person holding a valid first aid certificate, such as one issued by the Red Cross or other equivalent organization, shall be available to render first aid when work is in progress.

(c) *First aid kit.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a physician, based on the hazards anticipated at the worksite. The contents of the first aid kit shall be checked at least weekly. Expended items shall be promptly replaced.

(d) *Stretchers.* (1) There shall be available for each vessel being worked, one Stokes basket stretcher, or its equivalent, permanently equipped with bridles for attaching to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five, and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured with no burrs. Damaged stretchers shall not be used until repaired.

(e) *Life-rings.* (1) The employer shall ensure that there is in the vicinity of each vessel being worked, at least one U.S. Coast Guard approved 30 inch (76.2 cm) life-ring with no less than 90 feet (27.4 m) of line attached and at least one portable or permanent ladder which will reach from the top of the apron to the surface of the water.

(2) In addition to the provisions of paragraph (e) of this section, when working a barge, scow, raft, lighter, log boom, or carfloat alongside a ship, a U.S. Coast Guard approved 30 inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

(f) *Communication.* Telephone or equivalent means of communication shall be readily available.

§ 1918.98 Personnel.

(a) *Qualification of machinery operators.* (1) Only those employees determined by the employer to be competent by reason of training or experience, and who understand the signs, notices and operating instructions, and are familiar with the signal code in use, shall be permitted to operate a crane, winch, or other power operated cargo handling apparatus, or any power operated vehicle, or give signals to the operator of any hoisting apparatus. However, employees being trained and supervised by a designated person may operate such machinery and give signals to operators during training.

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments which may suddenly incapacitate the employee, shall be permitted to operate a crane, winch or other power operated cargo handling apparatus or a power-operated vehicle.

(b) *Supervisory accident prevention proficiency.* (1) After [insert date two years after promulgation of final standard], immediate supervisors of cargo handling operations of more than five persons shall satisfactorily complete a course in accident prevention. Employees newly assigned to supervisory duties after that date shall be required to meet the provisions of this paragraph within 90 days of such assignment.

(2) The accident prevention course shall consist of instruction suited to the particular operations involved.[6]

[6] The following are recommended topics: Safety responsibility and authority; elements of accident prevention; attitudes, leadership and motivation; hazards of longshoring, including peculiar local circumstances; hazard identification and elimination; applicable regulations; and accident investigations.

Subpart J—Personal Protective Equipment

§ 1918.101 Eye protection.

(a)(1) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment marked or labeled as meeting the manufacturing specifications of American National Standards Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1–1989, and shall require that it be used.

(2) For employees wearing corrective spectacles, eye protection equipment required by paragraph (a)(1) of this section must be of the type which can be worn over spectacles. Prescription ground safety lenses may be substituted if they provide equivalent protection.

(b) Eye protection shall be maintained in good condition.

(c) Used eye protection shall be cleaned and disinfected before issuance to another employee.

§ 1918.102 Respiratory protection.

(See § 1918.1(b)(12)).

§ 1918.103 Head protection.

(a) The employer shall require that employees exposed to impact, falling or flying objects, or electric shocks or burns wear protective hats.

(b) Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard Requirements for Protective Headwear for Industrial Workers, ANSI Z89.1–1986.

(c) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

§ 1918.104 Foot protection.

(a) The employer shall require that employees exposed to impact, falling objects, or puncture hazards wear safety shoes, or equivalent protection.

(b) Protective shoes shall bear identifying marks or labels indicating compliance with manufacturing provisions of the American National Standard for Personal Protection—Protective Footwear ANSI Z41–1991.

§ 1918.105 Other protective measures.

(a) *Protective clothing.* (1) The employer shall provide, and shall require the wearing of special protective clothing for those employees engaged in work in which such protective clothing is necessary.

(2) When necessary, protective clothing shall be cleaned and disinfected before reissuance.

(b) *Personal flotation equipment.* (1) The employer shall provide, and shall require the wearing of personal flotation devices for those employees engaged in work in which they may fall into the water:

(i) When such employees are working in isolation; or

(ii) Where physical limitations of available working space creates a hazard of falling into the water; or

(iii) Where the work area is obstructed by cargo or other obstacles so as to prevent employees from obtaining safe footing for their work; or

(iv) When working on the deck of a barge.

(2) Personal flotation devices shall be United States Coast Guard approved Type I PFD, Type II PFD, Type III PFD, or Type V PFD, or equivalent, in accordance with 46 CFR part 160 (Coast Guard Lifesaving Equipment Specifications) and 33 CFR part 175.23 (Coast Guard table of devices equivalent to personal flotation devices).

(3) Personal flotation devices shall be maintained in safe condition and shall be considered unserviceable when damaged so as to affect buoyancy or fastening capability.

Appendix I to Part 1918—Cargo Gear Register and Certificates (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

General

The tests, examinations and inspections indicated in this register are based on the requirements of I.L.O. Convention 152 and Recommendation 160. They are intended to ensure that ships having lifting appliances are initially certified by a competent person, and to establish periodically that they continue to be in safe working order to the satisfaction of a competent person acceptable to a competent authority.

A Register of lifting appliances and items of loose gear shall be kept in a form prescribed by the competent authority, account being taken of this model recommended by the International Labour Office. This Register and related certificates shall be kept available to any person authorized by the competent authority. The Register and certificates for gear currently aboard the ship shall be preserved for at least five years after the date of the last entry.

Instruction

1. *Initial Examination and Certification*

1.1. Every lifting appliance shall be certified by a competent person before being taken into use for the first time to ensure that it is of good design and construction and of adequate strength for the purpose for which it is intended.

1.2. Before being taken into use for the first time, a competent person shall supervise and witness testing, and shall thoroughly examine every lifting appliance.

1.3. Every item of loose gear shall, before being taken into use for the first time, shall be tested, thoroughly examined and certified by a competent person, in accordance with national law or regulations.

1.4. Upon satisfactory completion of the procedures indicated above, the competent person shall complete and issue the Register of lifting appliances and attach the appropriate certificates. An entry shall be made in part I of the Register.

1.5. A rigging plan showing the arrangement of lifting appliances shall be provided. In the case of derricks and derrick cranes, the rigging should show at least the following information.

(a) the position of guys;

(b) the resultant force on blocks, guys, wire ropes and booms;

(c) the position of blocks;

(d) the identification mark of individual items; and

(e) arrangements and working range of union purchase;

2. *Periodic Examination and Re-testing*

2.1. All lifting appliances and every item of loose gear shall be thoroughly examined by a competent person at least once in every twelve months. The particulars of these thorough examinations shall be entered in part I of the Register.

2.2. Re-testing and thorough examination of all lifting appliances and every item of loose gear is to be carried out;

(a) after any substantial alteration or renewal, or after repair to any stress bearing part, and;

(b) in the case of lifting appliances, at least once in every five years.

2.3. The retesting referred to in paragraph 2.2(a) may be omitted provided the part which has been renewed or repaired is subjected by separate test, to the same stress as would be imposed on it if it had been tested in-situ during the testing of the lifting appliance.

2.4. The thorough examinations and tests referred to in paragraph 2.2. are to be entered in part I of the Register.

2.5. No new item of loose gear shall be manufactured of wrought iron. Heat treatment of any existing wrought iron components should be carried out to the satisfaction of the competent person. No heat treatment should be applied to any item of loose gear unless the treatment is in accordance with the manufacturer's instruction; to the satisfaction of the competent person. Any heat treatment and the associated examination are to be recorded by the competent person in part I of the Register.

3. *Inspections*

3.1. Regular visual inspections of every item of loose gear shall be carried out by a responsible person before use. A record of these regular inspections is to be entered in part II of the Register, but entries need only be made when the inspection has indicated a defect in the item.

4. *Certificates*

4.1. The certification forms to be used in conjunction with this Register (Form No. 1) are as follows:

(Form No. 2)—Certificate of test and thorough examination of lifting appliance.

(Form No. 2[U])—Certificate of test and thorough examination of derricks used in union purchase.

(Form No. 3)—Certificate of test and thorough examination of loose gear.

(Form No. 4)—Certificate of test and thorough examination of wire rope.

Definitions

(a) The term "competent authority" means a minister, government department, or other authority empowered to issue regulations, orders or other instructions having the force of law.

(c) The term "competent person" means a person appointed by the master of the ship or the owner of the gear to be responsible for the performance of inspections and who has sufficient knowledge and experience to undertake such inspections.

(d) The term "thorough examination" means a detailed visual examination by a competent person, supplemented if necessary by other suitable means or measures in order to arrive at a reliable conclusion as to the safety of the lifting appliance or item of loose gear examined.

(e) The term "lifting appliance" covers all stationary or mobile cargo handling appliances used on board ship for suspending, raising or lowering loads or moving them from one position to another while suspended or supported.

(g) The term "loose gear" covers any gear by means of which a load can be attached to a lifting appliance, but which does not form an integral part of the appliance or load.

THE FOLLOWING ARE SAMPLE FORMS OF CERTIFICATES AS RECOMMENDED BY THE ILO

[Part I—Thorough Examination of Lifting Appliances and Loose Gear]

Situation and description of lifting appliances and loose gear (with distinguishing numbers or marks, if any) which have been thoroughly examined. (see note 1)	Certificate Nos.	Examination performed (see note 2)	I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was thoroughly examined and no defects affected its safe working condition where found other than those shown in Col. (5) (Date and Signature)	Remarks (To be dated and signed)
(1)	(2)	(3)	(4)	(5)

Note 1: If all the lifting appliances are thoroughly examined on the same date it will be sufficient to enter in Col. (1) "All lifting appliances and loose gear". If not, the parts which have been thoroughly examined on the dates stated must be clearly indicated.

Note 2: The thorough examinations to be indicated in Col. (3) include:

(a) Initial.
(b) 12 monthly.
(c) 5 yearly.
(d) Repair/Damage.
(e) Other thorough examinations.

PART II.—REGULAR INSPECTIONS OF LOOSE GEAR

Situation and description of loose gear (with distinguishing numbers or marks, if any) which has been inspected. (See Note 1)	Signature and date of the responsible person carrying out the inspection	Remarks (To be dated and signed)

PART II.—REGULAR INSPECTIONS OF LOOSE GEAR—Continued

Situation and description of loose gear (with distinguishing numbers or marks, if any) which has been inspected. (See Note 1)	Signature and date of the responsible person carrying out the inspection	Remarks (To be dated and signed)

Note 1: All loose gear should be inspected before use.

Identity of National Authority or Competent Organization *Form No. 2*

Certificate No. _____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry_____
Name of Owner_____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF LIFTING APPLIANCES

Situation and description of lifting appliances (with distinguishing numbers or marks, if any) which have been tested and thoroughly examined (1)	Angle to the horizontal or radius at which test load applied (2)	Test load (tones) (3)	Safe working load at angle or radius shown in Col. 2 (tones) (4)

Name and address of the firm or competent person who witnessed testing and carried out through examination
I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found: and that the safe working load is as shown.
Date:
Place:
Signature:
Note: This certificate is the standard international form as responded by International Labour Office in accordance with ILO Convention No. 152.

Reverse of Form No. 2

Instructions

1. Every lifting appliance shall be tested with a test load which shall exceed the Safe Working Load (SWL) as follows:

SWL	Test load
Up to 20 tons	25 percent in excess.
20 to 50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

2. In the case of derrick systems, the test load shall be lifted with the ship's normal tackle with the derrick at the minimum angle to the horizontal for which the derrick system was designed (generally 15 degrees), or at such greater angle as may be agreed. The angle at which the test was made should be stated in the certificate

2.1. The SWL shown is applicable to swinging derrick systems only. When derricks are used in union purchase, the SWL (U) is to be shown on Form 2 (U).

2.2. In the case of heavy derricks, care should be taken to ensure that the appropriate stays are correctly rigged.

3. In the case of cranes, the test load is to be hoisted, slewed and luffed at slow speed. Gantry and traveling cranes together with their trolleys, where appropriate, are to be traversed and travelled over the full length of their track.

3.1. In the case of variable load-radius cranes, the tests are generally to be carried out with the appropriate test load at maximum, minimum and intermediate radii.

3.2. In the case of hydraulic cranes where limitations of pressure make it impossible to lift a test load 25 percent in excess of the safe working load, it will be sufficient to lift the greatest possible load, but in general this should not be less than 10 percent in excess of the safe working load.

4. As a general rule, tests should carried out using test loads, and no exception should be allowed in the case of initial tests. In the case of repairs/replacement or when the periodic examination calls for re-test, consideration may be given to the use of spring or hydraulic balances provided the SWL of the lifting appliance does not exceed 15 tones. Where a spring or hydraulic balance is used, it shall be calibrated and accurate to within ±2 percent and the indicator should remain constant for 5 minutes.

4.1. If the test weights are not used, this is to be indicated in Col. (3).

5. The expression "tone" shall mean a tone of 1000 kg. (2000 lbs)

6. The terms "competent person", "thorough examination", and "lifting appliance" are defined in Form No. 1.

Note: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

Identity of National Authority or Competent Organization *Form No. 2(U)*

Certificate No._____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry _____

Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF DERRICKS USED IN UNION PURCHASE

Situation and description of derricks used in Union Purchase with distinguishing numbers or marks) which have been tested and thoroughly examined. (1)	Max. height of triangle plate above hatch coaming (m) or max. angle between runners (2)	Test Load (tones) (3)	Safe working load, SWL When operating in Unit Purchase (tones) (4)

Position of outboard preventer guy attachments:
(a) forward/aft* of mast _____
and (b) from ships centerline _____
Position of inboard preventer guy attachments:
(a) forward/aft* of mast _____
and (b) from ships centerline _____
*Delete as appropriate
Name and address of the firm or competent person who witnessed testing and carried out thorough examination
I certify that one the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found: and that the safe working load is as shown.
Date:
Place:
Signature:
Note: This certificate is the standard international form as recommended by International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. (U)

Instructions

1. Before being taken into use, the derricks rigged in Union Purchase shall be tested with a test load which shall exceed the Safe Working Load (SWL (U)) as follows:

SWL	Test load
Up to 20 tons	25 percent in excess.

SWL	Test load
20 to 50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

2. Tests are to be carried out at the approved maximum height of the triangle plate above the hatch coaming or at the angle between the cargo runners and with the derrick booms in their working positions, to prove the strength of deck eye plates and the Union Purchase system. These heights or angles must not exceed the values shown on the rigging plan.

3. Tests should be carried out using test loads.

4. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs.)

5. The terms "competent person", "thorough examination" and "lifting appliance" are defined in Form No. 1.

Note: For recommendations on test procedures, reference may be made to the ILO document "Safety and Health in Dock Work".

Identity of National Authority or Competent Organization

Certificate No. _____
Name of Ship _____
Official Number _____
Call Sign _____
Port of Registry _____
Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF LOOSE GEAR

Distinguishing number or mark	Description of loose gear	Number tested	Date of test	Test load (tons)	Safe work load (SW) (tones)

Name and address of makers or suppliers:
Name and address of the firm or competent person who witnessed testing and carried out thorough examination.
I certify that the above items of loose gear were tested and thoroughly examined and no defects affecting their SWL were found.
Date:
Place:
Signature:
Note: This certificate is the standard international form as recommended.

Reverse Form No. 3

Instructions

1. Every item of loose gear is to be tested and thoroughly examined before being put into use for the first time and after any substantial alteration or repair to any part liable to affect its safety. The test loads to be applied shall be in accordance with the following table:

Item	Test load (tones)
Single sheave blocks (see note 1).	4 × SWL
Multi sheave blocks (see note 2):	
SWL <25 Tones	2 × SWL
25 tones <SWL ≤160 tones.	(0,933 × SWL) + 27
SWL >160 tones	1,1 × SWL
Chains, hooks, rings, shackles, swivels, etc.:	
SWL <25 tones	2 × SWL
SWL >25 tones	(1,22 ×SWL) + 20
Lifting beams, spreaders, frames and similar devices:	
SWL ≤10 tones	2 × SWL
10 tones <SWL ≤160 tones.	(1,04 × SWL) + 9,6
SWL >160 tones	1,1 × SWL

Note: 1. The SWL for single sheave block, including single sheave blocks with beckets, is to be taken as one-half of the resultant load on the head fitting.

2. The SWL of a multi-sheave block is to be taken as the resultant load on the head fitting.

NOTE: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

2. This form may also be used for the certification of interchangeable components of lifting appliances.

3. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs)

4. The terms "competent person", "thorough examination" and "loose gear" are defined in Form No. 1.

Identity of National Authority or Competent Organization *Form No. 4*

Certificate No._____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry _____
Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF WIRE ROPE

Name and address of maker or supplier	
Nominal diameter of rope (mm)	
Number of strands	
Number of wires per strand	
Core	
Lay	
Quality of wire (N/mm²)	
Date of test of sample	
Load at which sample broke (tones)	
Safe working load of rope (tones)	
Intended use	

Name and address of the firm or competent person who witnessed testing and carried out thorough examination.

I certify that the above particulars are correct, and that the rope was tested and thoroughly examined and no defects affecting its SWL were found.

Date:
Place:
Signature:

NOTE: This certificate is the standard international form as recommended by the International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. 4

Instructions

1. Wire rope shall be tested by sample, a piece being tested to destruction.

2. The test procedure should be in accordance with an International or recognized National standard.

3. The SWL of the rope is to be determined by dividing the load at which the sample broke, by a coefficient of utilization, determined as follows:

Item	Coefficient
Wire rope forming part of a sling:	
SWL of the sling	5
SWL < 10 tones	10[5]
10 tones < SWL ≤ 160 tones	(8,85×SWL)+1910
SWL > 160 tones	3
Wire rope as integral part of a lifting appliances:	
SWL of lifting appliance	10[4]
SWL ≤ 160 tones	(8,85×SWL)+1910
SWL > 160 tones	3

Item	Coefficient
SWL > 160 tones	3

Note: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

These coefficients should be adopted unless other requirements are specified by a National Authority.

4. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs)

5. The terms "competent person", "thorough examination" and "lifting appliance" are defined in Form No. 1.

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear

(Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

TABLE 1.—WIRE ROPE CLIPS

Improved plow steel, rope Inches (CM)	Minimum number of clips: Drop forged	Minimum number of clips: Other material	Minimum spacing: Inches
½ or less (1.3)	3	4	3 (7.6)
⅝ (1.6)	3	4	3¾ (9.5)
¾ (1.9)	4	5	4½ (11.4)
⅞ (2.2)	4	5	5¼ (13.3)
1 (2.5)	5	6	6 (15.2)

TABLE 1.—WIRE ROPE CLIPS—Continued

Improved plow steel, rope	Minimum number of clips		Minimum spacing
Inches (CM)	Drop forged	Other material	Inches
1⅛ (2.7)	6	6	6¾ (17.1)
1¼ (3.2)	6	7	7½ (18.1)
1⅜ (3.5)	7	7	8½ (21.0)
1½ (3.8)	7	8	9 (22.9)

TABLE 2

Natural Fibre Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=5

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal
90 deg. 60 deg. 45 deg. 30 deg.

Rope—Diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
½	550	250	1,100	900	750	550
9/16	700	350	1,400	1,200	1000	700
5/8	900	450	1,800	1,500	1,200	900
¾	1,100	550	2,200	1,900	1,500	1,100
13/16	1,300	650	2,600	2,300	1,800	1,300
⅞	1,500	750	3,100	2,700	2,200	1,500
1	1,800	900	3,600	3,100	2,600	1,800
1 1/16	2,100	1,100	4,200	3,600	3,000	2,100
1⅛	2,400	1,200	4,800	4,200	3,400	2,400
1¼	2,700	1,400	5,400	4,700	3,800	2,700
1 5/16	3,000	1,500	6,000	5,200	4,300	3,000
1½	3,700	1,850	7,400	6,400	5,200	3,700
1⅝	4,500	2,300	9,000	7,800	6,400	4,500
1¾	5,300	2,700	10,500	9,200	7,500	5,300
2	6,200	3,100	12,500	10,500	8,800	6,200
2⅛	7,200	3,600	14,500	12,500	10,000	7,200
2¼	8,200	4,100	16,500	14,000	11,500	8,200
2½	9,300	4,700	18,500	16,000	13,000	9,300
2⅝	10,500	5,200	21,000	18,000	14,500	10,500
Endless sling:						
½	950	500	1,900	1,700	1,400	950
9/16	1,200	600	2,500	2,200	1,800	1,200
5/8	1,600	800	3,200	2,700	2,200	1,600
¾	2,000	950	3,900	3,400	2,800	2,000
13/16	2,300	1,200	4,700	4,100	3,300	2,300
⅞	2,800	1,400	5,600	4,800	3,900	2,800
1	3,200	1,600	6,500	5,600	4,600	1,800
1 1/16	3,800	1,900	7,600	6,600	5,400	3,800
1⅛	4,300	2,200	8,600	8,600	6,100	4,300
1¼	4,900	2,400	9,700	8,400	6,900	4,900
1 5/16	5,400	2,700	11,000	9,400	7,700	5,400
1½	6,700	3,300	13,500	11,500	9,400	6,700
1⅝	8,100	4,100	16,000	14,000	11,500	8,000
1¾	9,500	4,800	19,000	16,500	13,500	9,500
2	11,000	5,600	22,500	19,500	16,000	11,000
2⅛	13,000	6,500	26,000	22,500	18,500	13,000
2¼	15,000	7,400	29,500	25,500	21,000	15,000
2½	16,500	8,400	33,500	29,000	23,500	16,500
2⅝	18,500	9,500	37,000	32,500	26,500	18,500

TABLE 3A

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=6

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal

Rope—diameter nominal in.	Vertical—hitch	Choker—hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
1/2	650	350	1,300	1,200	950	650
9/16	800	400	1,600	1,400	1,100	800
5/8	1,000	500	2,000	1,700	1,400	1,000
3/4	1,300	700	2,700	2,300	1,900	1,300
13/16	1,600	800	2,600	2,300	2,200	1,600
7/8	1,800	900	3,100	2,700	2,600	1,800
1	2,200	1,100	3,600	3,100	3,100	2,200
1 1/16	2,500	1,300	4,200	3,600	3,600	2,500
1 1/8	2,900	1,500	4,800	4,200	4,100	2,900
1 1/4	3,300	1,700	6,700	5,800	4,700	3,300
1 5/16	3,700	1,900	7,400	6,400	5,300	3,700
1 1/2	4,700	2,400	9,400	8,100	6,700	4,700
1 5/8	5,700	2,900	11,500	9,900	8,100	5,700
1 3/4	6,800	3,400	13,500	12,000	9,600	6,800
2	8,200	4,100	16,500	14,500	11,500	8,200
2 1/8	9,700	4,800	19,500	16,500	13,500	9,700
2 1/4	11,000	5,500	22,000	19,000	15,500	11,000
2 1/2	12,500	6,300	25,500	22,000	18,000	12,500
2 5/8	14,500	7,100	28,500	24,500	20,000	14,500

TABLE 3B

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor = 6

Endless Sling

Basket Hitch

Angle of rope to horizontal
90 deg. 60 deg. 45 deg. 30 deg.

Angle of rope to horizontal

Rope—Diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
1/2	1,200	600	2,400	2,100	1,700	1,200
9/16	1,500	750	2,900	2,500	2,100	1,500
5/8	1,800	900	3,500	3,100	2,500	1,800
3/4	2,400	1,200	4,900	4,200	3,400	2,400
13/16	2,800	1,400	5,600	4,900	4,000	2,800
7/8	3,300	1,600	6,600	5,700	4,600	3,300
1	4,000	2,000	8,000	6,900	5,600	4,000
1 1/16	4,600	2,300	9,100	7,900	6,500	4,600
1 1/8	5,200	2,600	10,500	9,000	7,400	5,200
1 1/4	6,000	3,000	12,000	10,500	8,500	6,000
1 5/16	6,700	3,400	13,500	11,500	9,500	6,700
1 1/2	8,500	4,200	17,000	14,500	12,000	8,500
1 5/8	10,500	5,100	20,500	18,000	14,500	10,500
1 3/4	12,500	6,100	24,500	21,000	17,500	12,500
2	15,000	7,400	29,500	25,500	21,000	15,000
2 1/8	17,500	8,700	35,500	30,100	24,500	17,500
2 1/4	19,500	9,900	39,500	34,000	28,000	19,500
2 1/2	23,000	11,500	45,500	39,500	32,500	23,000
2 5/8	25,500	13,000	51,500	44,500	36,500	25,500

TABLE 4A.—RATED LOAD FOR GRADE 80 ALLOY STEEL CHAIN SLINGS [1]

[Chain per NACM]

Chain size nominal		Single leg sling—90 deg. to horizontal loading		Rated load double leg sling horizontal angle [2]					
				60 deg. ✓ double at 60 deg.		45 deg. ✓ double at 45 deg.		30 deg. ✓ double at 30 deg.	
in.	mm	lb	kg	lb	kg	lb	kg	lb	kg
8/32	7	3,500	1570	6,100	2700	4,900	2200	3,500	1590
2/8	10	7,100	3200	12,300	5500	10,000	4500	7,100	3200
1/2	13	12,000	5400	20,800	9400	17,000	7600	1,200	5400
5/8	16	18,000	8200	31,300	14200	25,600	11600	18,100	8200
3/4	20	28,300	12800	49,000	22300	40,000	18200	28,300	12900
7/8	22	34,200	15500	59,200	27200	48,400	22200	34,200	15700
1	26	47,700	21600	82,600	37900	67,400	31000	47,700	21900
1 1/4	32	72,300	32800	125,200	56800	102,200	46400	72,300	32800

Notes:
[1] Other grades of proof tested steel chain include Proof Coil (Grade 28), Hi-Test (Grade 43 Chain, and Transport (Grade 70) Chain. These grades are not recommended for overhead lifting and therefore are not covered by this Standard.
[2] Rating of multi-leg slings adjusted for angle of loading between the inclined leg and the horizontal plane of the load.

TABLE 4 B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, In.
in	mm	
8/32	7	0.037
3/8	10	0.052
1/2	13	0.060
5/8	16	0.084
3/4	20	0.105
7/8	22	0.116
1	26	0.137

TABLE 4 B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK—Continued

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, In.
in	mm	
1 1/4	32	0.169

Note: For other sizes, consult chain or sling manufacturer.

TABLE 5—SAFE WORKING LOADS FOR SHACKLES

[In tons of 2,000 Pounds]

Material size (inches)	Pin diameter (inches)	Safe working load
1/4	5/8	1.4
5/8	3/4	2.2
3/4	7/8	3.2
7/8	1	4.3
1	1 1/2	5.6
1 1/2	1 1/4	6.7
1 1/4	1 3/8	8.2
1 5/8	1 1/2	10.0
1 1/2	1 5/8	11.9
1 3/4	2	16.2
2	2 1/4	21.1

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6 x 19 OR 6 x 37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH FIBRE CORE (FC)

[Rated Loads [1] Tons (2000 lb)]

Rope diameter, in.	Vertical			Chocker
	HT	MS	S	HT. MS & S
1/4	0.49	0.51	0.55	0.38
8/16	0.76	0.79	0.85	0.6
3/8	1.1	1.1	1.2	0.85
7/16	1.4	1.5	1.7	1.2
1/2	1.8	2.0	2.1	1.5
9/16	2.3	2.5	2.7	1.9
5/11	2.8	3.1	3.3	2.3
3/4	3.9	4.4	4.8	3.3
7/8	5.2	6.0	6.4	4.5
1	6.7	7.7	8.4	5.9
1 3/8	8.4	9.5	11	7.4
1 1/4	10	12	13	9.0
1 3/8	12	14	16	11
1 1/2	15	17	18	13
1 5/8	17	19	21	15
1 3/4	20	22	25	17
2	26	29	32	22

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT (FC) columns
MS=Mechanical Splice
S=Poured Socket or Swaged Socket
NOTES:
(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.

WIRE ROPE TABLE—RATE LOADS FOR SINGLE LEG SLINGS 6×19 OR 6×37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated Loads [1], Tons (2000 lb)]

Rope diameter, in.	Vertical			Choker	Vertical basket	
	HT	MS	S	HT, MS & S	[Note [2]] HT	[Note [3]] MS & S
3/4	0.53	0.56	0.59	0.31	1.1	1.1
5/16	0.82	0.87	0.92	0.64	1.6	1.7
3/8	1.2	1.2	1.3	0.92	2.3	2.5
7/10	1.5	1.7	1.8	1.2	3.1	3.4
1/2	2.0	2.2	2.3	1.6	4.0	4.4
9/16	2.5	2.8	2.9	2.0	4.9	5.5
6/8	3.0	3.4	3.6	2.6	6.0	6.8
3/4	4.2	4.9	5.1	3.6	8.4	9.7
7/8	5.5	6.6	6.9	4.8	11	13
1	7.2	8.5	9.0	6.3	14	17
1 1/8	9.0	10	11	7.9	18	20
1 1/4	11	13	14	9.7	22	26
1 3/8	13	15	17	12	27	31
1 1/2	16	18	20	14	32	37
1 5/8	18	21	23	16	37	43
1 3/4	21	25	27	19	43	49
2	28	32	34	24	55	64

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3
MS=Mechanical Splice
S=Poured Socket or Swaged Socket
Notes:
[1] These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
[2] These values only apply when the D/d ratio is 15 or greater.
[3] These values only apply when the D/d ratio is 25 or greater.
D=Diameter or curvature around which the body of the sling is bent
d=Diameter of rope

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6×19 or 6×37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated Loads [1], Tons (2000 lb)]

Rope diameter, in.	Vertical		Choker	Vertical Basket [Note [2]]
	MS	S	MS&S	MS&S
1/4	0.65	0.68	0.48	1.3
5/16	1.0	1.1	0.74	2.0
3/8	1.4	1.5	1.1	2.9
7/10	1.9	2.0	1.4	3.9
1/2	2.5	2.7	1.9	5.1
9/16	3.2	3.4	2.4	6.4
6/8	3.9	4.1	2.9	7.8
3/4	5.6	5.9	4.1	11
7/8	7.6	8.0	5.6	15
1	9.8	10	7.2	20
1 1/8	12	13	9.1	24
1 1/4	15	16	11	30
1 3/8	18	19	13	36
1 1/2	21	23	16	42
1 5/8	24	26	18	49
1 3/4	28	31	21	57
2	37	40	28	73

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3
MS=Mechanical Splice
S=Poured Socket or Swaged Socket
Notes:
[1] These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
[2] These values only apply when the D/d ratio is 15 or greater.

Appendix III to Part 1918—Container Top Safety (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

Due to the almost limitless physical possibilities dictated by such factors as vessel design; container type; container stowage; types of container hoisting gear, etc., there may be instances during vessel loading/discharge operations when it is not feasible to utilize container top fall protection devices. As a result, a case by case and event by event approach must be utilized in assessing the feasibility of providing such devices.

The following are examples of situations where fall protection *may* not be feasible:

- When hooking up to or disconnecting from an overheight container using "special" gear, where attaching fall protection to the cranes spreader bar is not allowed by the owner of the crane (for example a Port Authority).
- When handling containers, "in a chimney stow" on a break bulk vessel, with ships gear, when a personnel basket is not sufficient to be used as an anchorage point.

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Part III

Environmental Protection Agency

40 CFR Parts 124 and 270
RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[FRL–4889–1]

RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend its regulations under the Resource Conservation and Recovery Act (RCRA) governing the permitting of hazardous waste management facilities. This proposed rule expands the opportunities for public involvement by allowing public participation at an earlier point in the permitting process for all RCRA facilities, and during key permitting milestones. This proposed rule also amends and clarifies permit modification classifications pertaining to combustion facilities. Finally, this proposed rule amends the procedures for interim status combustion facilities during the trial burn period by making the procedures more equivalent to the procedures governing permitted facilities.

DATES: Comments on this proposed rule must be submitted on or before August 1, 1994.

ADDRESSES: Written comments on this proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (5305), 401 M Street SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F–94–PPCP-FFFFF) in the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Copies of docket material may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1–800–424–9346 (in Washington, DC, call (703) 412–9810), or Patricia Buzzell at (703) 308–8632, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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I. Authority

These regulations are proposed under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Section 3004 of the Resource Conservation and Recovery Act (RCRA), requires owners and operators of treatment, storage, and disposal facilities to comply with standards "necessary to protect human health and the environment." These standards are implemented generally through interim status standards applicable to facilities that achieve interim status under RCRA section 3005(c), and through permits that are issued by EPA or under authorized State programs. EPA continuously strives to improve the hazardous waste management standards in order to ensure protection of human health and the environment.

The role that combustion plays in hazardous waste management has changed dramatically over the last decade and a half. With the recognition that land disposal of hazardous waste

could present long term pollution problems, larger use of combustion ensued. However, waste treatment alone will not totally solve the problems associated with hazardous waste disposal. Therefore, EPA decided to take a fresh look at how to achieve a fully integrated waste management program that gives source reduction its proper emphasis.[1]

To this end, on May 18, 1993, the Agency announced its Draft Strategy on Waste Minimization and Hazardous Waste Combustion. EPA issued the strategy in draft form as the starting point for the debate on what source reduction/recycling actions and regulatory changes the Agency should pursue. The Agency has been aggressive in involving all the stakeholders as part of the national dialogue on these national policy questions. In addition, since EPA and the States are partners and co-regulators in hazardous waste management, any evaluation of the role of waste minimization and hazardous waste combustion in the hazardous waste management system must be a joint federal and state effort. Thus, EPA and the States have used, and will continue to use, a joint EPA/State committee to further develop the national strategy.

In the context of a national dialogue on waste minimization and hazardous waste combustion, the Agency has identified a number of specific actions it would pursue to ensure that existing combustion facilities operate safely and without unacceptable risks to human health and the environment. These actions include:

- Aggressive use of waste minimization measures in permitting and enforcement efforts that involve generators of combustible waste, as well as incinerators and boilers and industrial furnaces (BIFs);
- Ensuring that a comprehensive risk assessment, including indirect risk, is conducted at each facility site;
- Use of omnibus permitting authority to include dioxin/furan emission limits and more stringent particulate matter standards in new permits, where necessary to protect human health and the environment; and
- Giving low management priority to permitting any new incinerator and BIF capacity, unless the new facilities would replace and be a significant improvement over existing capacity; in other words, the draft strategy makes interim status combustion facilities the highest permitting priority, in terms of processing permits, in order to bring these facilities under more comprehensive environmental controls.

In addition, the draft strategy calls for development of mechanisms to facilitate increased public participation in the permitting process. By developing such mechanisms, EPA hopes to allow the public early access to information about the facility and an opportunity to participate in permitting decisions regarding hazardous waste storage, treatment, or disposal facilities (TSDFs) that may affect their communities.

By providing citizens an enhanced opportunity to participate in facility permitting, the Agency is striving to give citizens more input into decisions about facilities that may impact their communities. This may be particularly so in low income or minority communities where the lack of this opportunity has been felt strongly. Consistent with the Agency's efforts to ensure environmental justice, EPA intends that this rulemaking will give people in such communities increased opportunity to affect RCRA permitting decisions.

The draft strategy has many components and implementing all of its aspects will take time. Today's notice is the first regulatory action that EPA has taken under the draft strategy; it addresses public participation and several improvements to the RCRA permitting program that EPA had envisioned prior to the development of the draft strategy. Specifically, EPA proposes to: (1) Expand opportunities for timely and effective public involvement in the permitting process for all types of units; (2) improve the regulations pertaining to permit modifications, specifically, to clarify combustion modification classifications; and (3) align certain interim status requirements for combustion units with the more stringent permit standards for new units, particularly with regard to trial burns. Although the Draft Waste Minimization and Combustion Strategy focuses on combustion units, many of the requirements EPA is proposing today are more encompassing and apply to all RCRA facilities.

Additional efforts are underway to continue to improve EPA's hazardous waste management standards and to implement other components of the Agency's Draft Waste Minimization and Combustion Strategy. Today's proposed rule is only one piece of an integrated and comprehensive set of regulatory, non-regulatory, and guidance materials intended to support the Agency's Draft Waste Minimization and Combustion Strategy.

EPA has taken administrative steps to address the section of the draft strategy that discusses the Agency's permit denial and appeals process. In particular, the draft strategy indicates that EPA will evaluate ways to limit the burning of hazardous waste in interim status units during the administrative appeal of a permit denial, prior to a final decision. EPA considered a number of options for implementing this aspect of the draft strategy and selected one that could be effected immediately.

The Agency issued a directive under Administrator Browner's signature, on March 16, 1994, to prioritize and expedite the review by the Environmental Appeals Board (EAB) of Federal RCRA permit denials. Under the procedures set forth in the directive, entitled Expedited Administrative Review of Appeals of RCRA Permit Denials Filed by Interim Status Hazardous Waste Combustion Facilities, the Administrator directed the EAB to take final action on any combustion permit denial no later than 90 days from the receipt of a petition for review. EPA believes that these procedures will promote the draft strategy's goal of limiting burning of waste during the potentially lengthy appeals process, during which interim status facilities whose permits were denied were entitled to continue operating under interim status, without infringing upon important rights of appeal.

III. Section by Section Analysis

A. Expanded Public Participation Requirements for All RCRA Facilities

1. Purpose of Public Involvement in Today's Rule

The purpose of this section of the proposed rule is to enhance public involvement in the RCRA permit process by improving and increasing the opportunities for public participation. The permitting agency should carry out these new opportunities concurrently with the existing permitting process. Today's proposed requirements should not delay the process.

"Public participation" is part of the process leading to a final EPA or State permit decision; it provides an opportunity for the public to express its views to the permitting authority and the applicant, and enables both to give due consideration to the public's concerns. Today's proposal will establish procedures to promote better and more timely information-sharing, not only between the public and the

[1] While the Agency is committed to source reduction as its primary approach to waste management, it believes that there will continue to be a role for waste combustion, provided it is done safely and in compliance with federal regulations. Combustion is a proven waste treatment technique to address many types of wastes.

permitting agency, but among the facility applicant, EPA (or the State) and the public. In particular, the rule places new responsibilities on the permit applicant. The Agency believes that the permit applicant, who is responsible for initiating the permit process, is a key participant in the public participation process because it is the permit applicant who must interact and operate within the community.

Although this portion of today's proposal applies to all applicants for new RCRA permits, certain aspects of the proposal specifically respond to the Agency's Draft Waste Minimization and Combustion Strategy (see the Background Section of today's preamble for further discussion of the draft strategy). As noted above, one component of the draft strategy specifically calls for greater and earlier public involvement in the hazardous waste permitting process. Accordingly, EPA proposes to amend the hazardous waste regulations to provide for earlier public involvement in the permitting process and, in the case of combustion units, to ensure public involvement at the trial burn plan stage. For example, today's regulations propose specific provisions to: solicit public participation at the beginning of the permit process for all new and interim status facilities; maintain open lines of communication with the public throughout the permit process; and increase public involvement with regard to trial burn plans at combustion facilities. These provisions will provide the public an expanded role in the permitting process by promoting community participation and input at all decision-making levels. These provisions will also help the permitting authority to better address public concerns during the permitting process and foster continued community involvement after facilities are permitted. These procedures are consistent with, and in furtherance of, the congressional mandate, expressed in RCRA section 7004(b)(1), to "encourage" and "assist" public involvement in implementation of the permit program.

2. Current Public Participation Requirements in the RCRA Permit Process

Today's proposed public involvement requirements build upon the current RCRA public participation process. EPA does not intend for the proposed provisions to replace or delete the existing public participation requirements in 40 CFR part 124 and 40 CFR 270.42; these requirements form the foundation for public involvement activities during the RCRA permitting process.

Four steps make up the existing RCRA permitting decision process: (1) Receipt and review of the permit application; (2) preparation of draft permit or decision to deny; (3) public comment period; and (4) final permit decision. EPA regulations currently require public involvement activities during two of the four steps. The first step in the decision process begins when the permitting agency receives the permit application from the facility. Under the existing federal rules, no direct public involvement activities occur at this stage; however, the permitting agency begins to assemble a mailing list of appropriate government agencies and individuals, including interested members of the public, as required by § 124.10(c). The permitting agency uses the list to distribute information about meetings, hearings, and available reports and documents later in the permit process. In addition, the permitting agency may periodically publicize the existence of this list and solicit additions to it.

The second step in the permitting decision process occurs after the regulatory agency completes review of the permit application. At this point, the regulatory agency decides either to tentatively deny the permit application or to prepare a draft permit for the facility. The third step occurs once the regulatory agency makes its preliminary decision about the permit application. Under the existing regulations, the public has its first formal participation opportunities in this step. If the permitting agency prepares a draft permit, it must give a formal public notice that the draft permit is available for public review and comment. In addition, the permitting authority must formally notify the public if it plans to deny a permit application. In both cases, the permitting agency must place the notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list. A 45-day public comment period on the draft permit or notice of intent to deny the permit follows the publication of the notice. The comment period provides the public with an opportunity to comment, in writing, on conditions contained in the draft permit or notice of intent to deny. The regulatory agency may re-open or extend the comment period if, during the comment period, it receives substantial new questions or issues concerning the draft permit decision. In addition, the public may request that the permitting agency hold a public hearing on the draft permit decision. If the regulatory agency holds a public hearing, it must give the public a 30-day advance notice of the time and place of the hearing.

The final permit decision is the fourth step in the permitting decision process. After the public comment period closes, the regulatory agency reviews and evaluates all written and oral comments and, then, issues a final permit decision. At this time, the regulatory agency must send a notice of decision, together with a written response to all significant comments, to all persons who submitted public comments or requested notice of the final permit decision (in accordance with § 124.17). The response to comments summarizes all significant comments received during the public comment period and explains how the permitting authority addressed or rejected the comments in the final permit decision. The permitting agency must place the written response to comments in the Administrative Record established at the regulatory agency.

3. Summary of Proposed Approach

a. EPA's approach to public participation. Today's amendments introduce provisions for new public notices and meetings in the permit process. Through this approach, EPA intends to open opportunities for public participation earlier in the permit process. Through earlier public involvement and improved public awareness, today's requirements will result in more meaningful and interactive public participation. At the same time, these amendments are flexible and allow permitting agencies and facilities to tailor public participation activities according to facility-specific circumstances.

By expanding public involvement opportunities, the proposed rule should streamline the permitting process, since public issues will be raised and addressed earlier in the process. At present, formal public involvement in the permitting process does not begin until the draft permit stage. By this point in the process, the permitting authority and the applicant already have discussed crucial parts of the Part B application; thus, the public often feels that most major decisions on the permit are made before public input. Under today's proposed requirements, the permitting authority will be focusing discussion and dialogue on the permit application earlier in the permitting process. EPA wishes to encourage the public to participate in these earlier and expanded opportunities for involvement, fully raising issues and concerns early so they may be evaluated and responded to. Such early and

meaningful dialogue should result in an expeditious permit decision.

The earlier public involvement opportunities proposed today allow the public the opportunity to raise issues before many decisions are made. This then allows the applicant and the permitting authority to address citizen concerns. The idea of promoting earlier public involvement in the permitting process is also consistent with recommendations put forth by the RCRA Implementation Study and a number of outside sources (e.g., the Keystone Center, environmental groups, and business trade associations).

EPA considered a variety of approaches in developing today's proposal. After careful evaluation, EPA believes that the proposed requirements will meet the Agency's goal of providing increased opportunity for public involvement. Today's proposed requirements would not, of course, preclude additional public involvement activities beyond the regulations, where appropriate on a facility-specific basis, such as alternative public outreach activities, supplementary meetings, or fact sheets. At RCRA locations, in fact, permitting agencies and facilities have implemented a variety of public involvement activities that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance for regional permit writers and public involvement staff, entitled the RCRA Public Involvement Manual (September 1993/ EPA 530–R–93–006). In the guidance, EPA recommends public involvement activities to encourage productive public participation in a variety of community and facility situations. Additional examples of ways to expand public involvement, beyond what is required by today's proposed regulations, are included in section 5.a: General Requirements for Providing Public Notice.

Before drafting this proposal, the Agency contacted a variety of interested parties involved in public outreach activities. EPA had discussions with a range of groups, including: Public interest groups, industry, state and local government, Indian tribal representatives, trade associations, and public involvement specialists from EPA regions and Headquarters. These groups submitted valuable comments and suggestions to the Agency on how to expand and enhance public involvement. The Agency also held an informal meeting on October 13, 1993, with a small, yet diverse group of stakeholders to receive their input and to facilitate the exchange of information concerning greater opportunities for public participation. This meeting was a starting point for efforts to improve public involvement in the permitting process; EPA would like to continue these discussions beyond this proposal.

Today's rule is consistent with, and builds upon, the Agency's final Public Participation Policy, published in the **Federal Register** at 46 FR 5740, January 19, 1981. This policy established a uniform set of guidelines concerning public participation in all EPA programs. The guidelines encouraged EPA programs to provide a consistent level of public involvement during EPA activities, including State and local activities funded or delegated by EPA. The 1981 policy embodied many public comments on improving the process and outlined new steps that the Agency should take to ensure that members of the public are given earlier and better opportunities to be involved in EPA decision-making. Among other things, the policy emphasized public access to information as a critical component to successful public participation programs, and encouraged the use of a variety of outreach activities throughout the permit process so that the public can be kept up to date on matters of concern. Today's rule builds upon these policy statements and, in many cases, strengthens them through proposed regulatory language. For example, EPA is proposing regulatory requirements to provide the public with the opportunity to attend a public meeting at the outset of the permitting process. Additional public notices, including improved notification activities, are required at new points within the permit process. These proposed notices will provide information to the public at the beginning of decision-making processes so that the public will have adequate time to respond. Finally, today's rule adopts the ideas suggested by the policy on "depositories" and incorporates them into a flexible tool called the information "repository."

In a separate effort, the Agency is reviewing its regulations that impose restrictions on siting RCRA hazardous waste treatment, storage, and disposal facilities (TSDFs). The Agency's current regulations impose restrictions on siting these facilities in flood plains and seismic zones. EPA believes that there may be a need for enhanced national minimum standards as required under section 3004(o)(7) of RCRA. Consistent with Executive Order 12898 on environmental justice, EPA is reviewing existing and potential standards for siting hazardous waste TSDFs. As a part of this review, the Agency intends to look at siting TSDFs in proximity to populations and institutions such as schools, hospitals, and prisons, to determine whether there is a need to consider (and the appropriate way to do so) such factors in siting these facilities.

In conducting the review, EPA will recognize the appropriate role of State and local governments in land use planning and facility siting. EPA does not intend to preempt this role. Rather, it is EPA's intention to review the current procedures and requirements to identify whether any additional measures are necessary to protect human health and the environment.

b. Structure of proposal. In expanding the public involvement activities within the permit process, EPA proposes to place these requirements within 40 CFR parts 124 and 270. EPA placed the general requirements for public participation within Part 124 Subpart B—Specific Procedures Applicable to RCRA Permits. Subpart B is an already established section, which does not contain any regulations at this time. EPA proposes to place public involvement requirements within Subpart B to ensure a clear and orderly integration of new RCRA permitting requirements into part 124. Please note that other sections of this rule will address additional public involvement requirements during the trial burn phase within part 270. The flow chart shown in Figure 1 indicates the points in the permitting process where the proposed additions to public involvement activities would occur.

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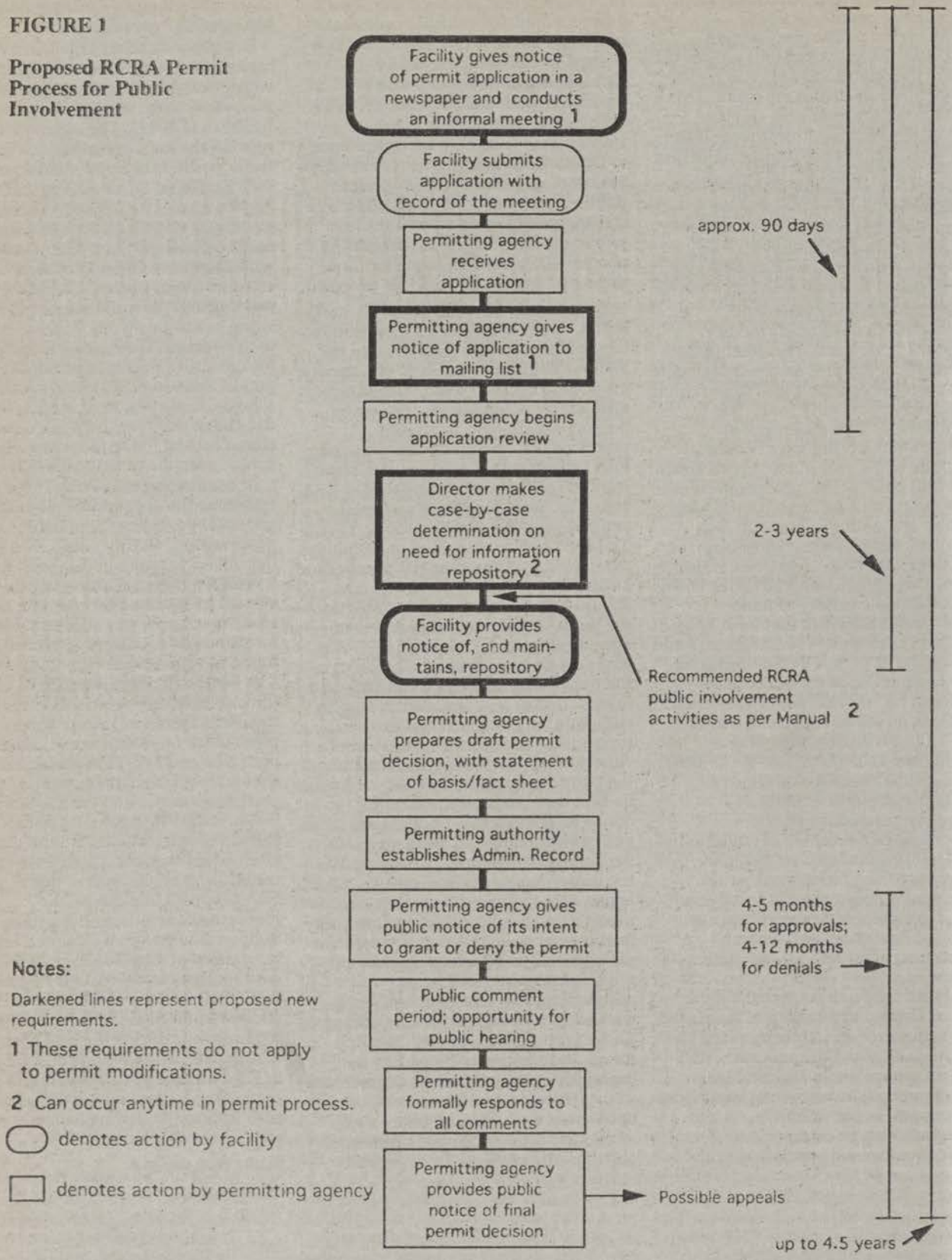
FIGURE 1

Proposed RCRA Permit Process for Public Involvement



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To avoid any potential confusion, it should be noted that facilities operating under interim status would not lose this status if they do not follow the procedures the Agency is proposing in part 124 or 270. However, the permitting agency may choose to pursue an enforcement action, not connected to the termination of interim status provisions, including a requirement that the application be resubmitted or the notice be republished, if a facility fails to comply with the requirements. Similarly, for a new facility, the permitting agency's recourse would be to require that the application be resubmitted or the notice republished under the correct procedures, rather than permit denial.

c. Overview of proposed requirements. EPA first proposes that a permit applicant must give notice and hold at least one informal public meeting before submitting a RCRA permit application to EPA or the State. EPA believes this requirement will address the public concern that public involvement occurs too late in the RCRA permit process. One purpose of the meeting is to inform the affected community of the facility's proposed operations and its intent to apply for a RCRA permit in the near future. Another important purpose of the meeting is for the applicant to solicit and receive public input. EPA believes that dialogue between the applicant and the public, before the permitting process is initiated with the permitting authority, will allow the public to raise important community issues early in the process, and will promote discussion between the public and the persons seeking the permit. In this way, the public will have direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to resolve public issues well in advance of the draft permit. For example, facility owners or operators could address public concerns through the permit application itself, by changing the proposed design or operation of the facility, or through subsequent public interactions.

The notice and meeting also will assist in the generation of a mailing list of interested citizens. This list is a currently required mechanism used in the distribution of notices and information concerning the facility at points throughout the permit process. The permitting authority is responsible for developing a representative mailing list for public notices under 40 CFR 124.10 (see also preamble Section A.2: Current Public Participation Requirements in the RCRA Permit Process). Section 124.10 specifies the timing and content of such mailing lists. The pre-application meeting will assist the permitting authority in identifying people or organizations to include on the list so that it is complete and represents everyone who demonstrates an interest in the facility and the permit process. The permitting authority may develop the mailing list, in part, from the pre-application meeting attendance list. It has been EPA's experience that mailing lists often are not fully developed until the permitting authority issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities.

Second, EPA is proposing that the permitting authority provide public notice upon receiving a permit application. Under this provision, the permitting authority would notify the public of proposed facility operations at a much earlier stage than 40 CFR part 124 currently requires. Existing § 124.10 requires the permitting authority to provide public notice of a facility's intention to obtain a RCRA permit, but only after the permitting authority has received and reviewed the application and proposes to grant or deny the permit. Due to the volume and complexity of information contained in a permit application, this process may take several years to complete from the time a permit application is initially submitted. (See Figure 1.) For some facilities, the public has expressed a concern that critical decisions about the facility already have been made by the time the permitting authority proposes the draft permit decision. A requirement for a notice at the permit application stage would allow members of the public to review a permit application at the same time as the permitting agency and inform the agency of any concerns or comments they may have.

In addition to involving the public earlier in the RCRA permitting process, the proposed provisions will also allow the public to get an overview of the RCRA application and permitting process, and the parts played by the permitting authority and the facility owner and operator in that process. Under the proposed rule, the permit applicant conducts the pre-application meeting since it is the applicant who initiates the permit process by submitting a permit application. The permitting authority issues the notice when it receives the permit application from the facility since, at that time, EPA or the State will use its authority to begin review of the permit application.

Table 1 below summarizes the applicability of the pre-application and notice of application provisions in today's rule.

TABLE 1.—PROPOSED REQUIREMENTS FOR THE PRE-APPLICATION MEETING AND THE NOTICE OF APPLICATION

Facility stage in permit process	Facility pre-application meeting	Agency notice of application
New Facility	Yes	Yes.
Interim Status	Yes	Yes.
Permit Renewal	No	Yes.
Permit Modification	No	No.
Post-Closure Permit	No	No.

Third, the Agency is proposing a provision that will allow the Director the discretion to require the facility to establish an information repository. An information repository is a central collection of documents, which could include reports, summaries of data, studies, plans, etc., that the regulatory agency considers in evaluating the permit. The collection would be set up by the applicant in a convenient and accessible location. An information repository, similar to those required under Superfund and proposed under the RCRA Subpart S corrective action regulations of 40 CFR part 264 (see 55 FR 30798, July 27, 1990), would allow the interested public greater access to information, such as the permit application, and other material relevant to the permit decision process. To maintain flexibility in the permit process, and in recognition that information repositories may not be necessary for all facilities, the Director will use his or her discretion, based primarily on the level of public interest, in requiring a facility to establish an information repository. In situations where public interest is high, a locally established repository may benefit a community by providing convenient and timely access to important information about a local facility. If EPA or an authorized State decides to require a facility to establish a repository, it should be noted that only one repository is needed to fulfill the intent of today's proposed requirement, whether the permitting process for that facility is EPA-lead, State-lead, or joint federal-state.

4. Applicability of Public Involvement Requirements

a. Equitable public participation. The Agency believes that affected members of the community should have an equal opportunity to participate in the permitting process. EPA considers the community to be all residents in the vicinity of the facility who might be

most affected by the facility's operations. The Agency recognizes that local communities may be composed of a diverse group of people who may not share English as a primary language. Therefore, for a notice to be effective, the Agency is requiring under proposed § 124.30 that both the facility and the permitting authority make all reasonable efforts to communicate with the various segments within the community. Multilingual public notices and fact sheets may be necessary for some communities, for example, communities that contain a significant non-English speaking population. Likewise, interpreters may need to be provided at public meetings and hearings. EPA understands that developing multilingual notices and fact sheets, and providing translators, could be difficult to implement depending on the size, composition, and diversity of the community. Also, resource constraints could be a factor when determining what is a "reasonable effort" to communicate effectively with the public. EPA would like to solicit comments on how the requirements proposed in § 124.30 could be implemented.

a.1. Agency activities dealing with environmental justice.

The Agency is placing heavy emphasis on environmental justice issues across all environmental programs. The Agency has stated repeatedly that environmental justice is one of EPA's top priorities; all offices should consider environmental justice issues during decision-making.

In December 1993, the Office of Solid Waste and Emergency Response (OSWER) established an Environmental Justice Task Force to broaden discussion of these issues and formulate short and long-term recommendations for how OSWER can integrate the Agency's environmental justice goals and objectives into all of OSWER's programs and activities. Specifically, the task force has examined ways that OSWER can better address the concerns of minority populations and low-income populations that are affected by OSWER-regulated facilities and may face disproportionately high and adverse human health or environmental effects. The task force has included representatives from all OSWER program and administrative offices, as well as other offices throughout the Agency that have an interest in OSWER's programs and activities. The task force has met with representatives from citizen groups, industry, Congress, and state and local governments to ensure that stakeholders have an opportunity to influence OSWER's environmental justice strategy. The draft recommendations emerging from OSWER's Environmental Justice Task Force are consistent with and supportive of the Agency's environmental justice goals and objectives, as well as the President's Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

The Agency believes that this rule presents significant opportunities to be responsive to environmental justice concerns in relation to specific OSWER-regulated facilities. The measures recommended in this proposed rule would help enhance the level of public participation in the permitting process and thereby provide minority populations and low-income populations with a greater voice in decision-making and a stronger opportunity to influence permit decisions early in the process. In today's proposal, the Agency would like to solicit comments on ways to incorporate environmental justice concerns into the RCRA public participation process.

In addition to public participation, some of the key environmental justice issues for the RCRA permitting program include: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; and (3) environmental justice concerns in corrective action cleanups. The Agency requests comments on these aspects of the RCRA program in order to help identify the need for additional rulemaking or policy guidance.

The Agency has also begun to focus on how EPA's programs can take account of the "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Although the Agency does not expect to address these issues in this rulemaking, EPA would like to solicit comment on suggested methodologies and procedures for undertaking this type of analysis.

With regard to the siting of a RCRA facility, EPA has in the past focused on geological factors to be considered when siting a facility, but has not undertaken a concerted effort to address environmental justice issues associated with the siting of a hazardous waste facility. The draft final report of the OSWER Environmental Justice Task Force recommends that the Agency compile a national summary of existing State, tribal, and local government requirements for siting with regard to environmental justice. The draft report also recommends that the Agency develop guidance for State, tribal, and local governments on how to best site a hazardous waste facility in the light of environmental justice concerns. In developing this guidance, the Agency would look to existing State and local requirements and would consult with a wide range of public and private stakeholders. EPA has placed the OSWER Environmental Justice Task Force Draft Final Report, April 25, 1994, into the docket for this proposed rule. The Agency is soliciting comments on the recommendations in the draft final report, as well as on any additional steps that the Agency might wish to consider in order to respond to environmental justice concerns associated with the siting of RCRA facilities.

EPA is also interested in exploring appropriate responses when confronted with a challenge to a RCRA permit based on environmental justice concerns. This issue has arisen in the context of recent challenges under Title VI of the Civil Rights Act alleging that federal grants allocated to States to support State RCRA permit programs are being administered in a discriminatory manner. The draft report of the OSWER Environmental Justice Task Force recommends that the Agency first seek to mediate appropriate resolutions among affected citizens, the State, and the permittee. Where necessary and prudent, the task force also proposes that the Agency explore ways of using risk and/or health assessments to determine whether the affected community would face unacceptable human health or environmental effects if the permit were issued. EPA requests comment on these recommendations as well as on the relationship of Title VI to RCRA permitting and EPA's administration of state grants.

The Agency would also like to solicit comments on ways to incorporate environmental justice concerns into the RCRA corrective action program. The OSWER Environmental Justice draft task force report recommends that the Agency examine the current priority-setting method for the cleanup of RCRA corrective action sites to determine whether this system adequately addresses environmental justice concerns. The task force has also recommended that environmental justice policy governing cleanup actions at RCRA corrective action facilities be consistent with the policy implemented under the Superfund program. The Agency would like to receive responses to these proposals as well as additional options under the RCRA corrective action program.

a.2. The relationship of today's rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation of the Subtitle C hazardous waste program on Indian lands. This includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement these proposed public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of Federally-recognized Tribes and commits EPA to a government-to-government relationship with these Tribes.

b. Applicability of pre-application meeting. The requirements for the pre-application meeting would pertain only to new permit applications, i.e., the initial permit applications submitted by either new or interim status facilities. Therefore, the proposed pre-application meeting requirements would not affect facilities that are submitting a permit renewal application under § 270.51 or applying for a permit modification under § 270.42. The additional requirements would not apply to cases where a facility submits a permit renewal application, since information concerning the facility would have been previously available to the public throughout the life of its operation. The facility would have completed the permit process and conducted public involvement activities, usually through the permit modification requirements. For example, the public will have had access to the administrative record for the facility, and the permitting authority already would have developed a mailing list for the facility.

Furthermore, EPA is proposing today in § 124.32(a) that the permitting authority provide public notice when a renewal application is submitted. This will provide the public an opportunity to further review the state of operations at the facility, and be aware that the previously approved permit is expiring. The current opportunities for public involvement throughout the duration of a facility's permit should be sufficient to keep the public informed of the facility's activities. No change can occur to any permit without the public, at a minimum, being notified (see § 270.42 modification procedures). EPA would like to request comments on whether these current opportunities are indeed sufficient, or whether the pre-application meeting requirements should apply to renewal permits.

Similarly, EPA does not believe the addition of a pre-application meeting requirement is necessary for requested permit modifications. A facility proposing changes to its permit must apply for a permit modification under § 270.42. Existing permit modification requirements have established public involvement procedures that must be followed by the permitting authority and the facility before the final decision. These requirements are comparable to those proposed today for permit applications submitted by new and interim status facilities. For example, significant permit modifications, called class 2 or class 3 modifications, require a public meeting at the initiation of the permit modification process to alert the public to changes the facility is proposing to make. Requiring an additional public meeting would be redundant.

EPA conducted a preliminary overview of State regulations containing public involvement requirements that could potentially overlap with today's pre-application requirements. Approximately a dozen States have siting permit regulations that contain public participation requirements, apart from RCRA requirements. The state siting requirements could overlap with the pre-application meeting requirement proposed today. For example, the two permit processes, i.e., for siting and RCRA permits, could share similar public involvement mechanisms.

EPA believes that it is important for the facility to host an informal and informational pre-application meeting with the public. This meeting should focus on the operating requirements for the permit, including (1) whether the facility should operate and (2) suggestions on how the facility should operate to protect human health and the environment. The informal atmosphere of the meeting should encourage dialogue between the public and the facility, addressing questions, such as the need for the facility, the proposed facility design, waste management practices, and safety considerations.

On the other hand, the public meetings required by State siting regulations are more formal and may be hosted by the State rather than the facility (although state siting regulations differ regarding which party is responsible for conducting the siting meeting). The focus of the siting meeting is also different than a pre-application meeting, usually examining such factors as the physical location of the proposed facility, including local land-use issues, location sensitivity and suitability.

In addition, there may be a large gap in time between the public siting meeting (for the dozen states with public involvement siting requirements) and the pre-application meeting. If a significant period of time were to elapse between the siting meeting and the actual commencement of the RCRA permitting process, then the issues raised at the siting meeting may not be fresh in the public's mind, or the public may not have the opportunity to raise new issues or potential solutions until later in the process.

Because the goals of each meeting are typically different, i.e., a decision for whether a new facility is located at a particular site versus a decision on whether a facility should operate and how a facility could operate to protect human health and the environment, EPA is not proposing today to allow siting meetings to automatically substitute for the pre-application meeting. Some of the same issues may come up in either public meeting; however, this should not deter the public from providing input at both meetings. Of course, if a State's requirements for siting meetings meet the goal of today's proposal for a facility-led pre-application meeting, particularly in terms of opening a dialogue between the applicant and the community, then they would probably fulfill authorization requirements. In this case, the State would not have to require separate pre-application meetings. Refer to Section V, State Authority, of this preamble for further information on flexibility within the State authorization process.

EPA evaluated the option of allowing State siting meetings to substitute for the pre-application meeting, and, for the reasons discussed above, decided not to include it in today's proposal. However, the Agency is requesting comments on this issue. Specifically, the Agency would like to hear comments on reasons for or against allowing State siting meetings to automatically substitute for the pre-application meeting.

c. Applicability of the public notice at permit application. The requirements for the permitting authority to provide public notice when it receives a permit application, like the pre-application meeting requirement, would not apply to permit modifications, because similar requirements already exist for both class 2 and class 3 permit modifications that would make the requirement redundant. Specifically, under § 270.42 (b)(2) and (c)(2), the permittee must send a notice of the modification request to all persons on the facility mailing list and publish the notice in a major local newspaper. The notice is required to give, among other things, the location where copies of the modification request and any supporting documents can be read and copied. EPA believes

that this requirement effectively substitutes for the public notice at application in the case of permit modifications.

Unlike the pre-application meeting requirement, the public notice requirement will apply to permit renewals. A public notice for permit renewals is appropriate because the renewal application may be significantly different from the original permit application, warranting early public involvement. For example, facilities may decide to propose major changes, such as addition of a new unit, at the time of permit renewal, separate from any modifications processed during its original permit. In this situation, the results would be an application that is new in certain key respects. The permitting authority should give the public the same notification as it would for a new permit application, even though the public may already be familiar with the general scope of operations at the facility.

In addition, since permit renewals generally occur 5 to 10 years after a facility is permitted and operating, a notice of the permit renewal alerts the public to the fact that the facility plans to continue operating. A public notice at permit renewal also would allow the public to compare changes between the initial approved permit and the permit renewal application to determine the magnitude of any proposed changes. Finally, the notice could serve as a mechanism for updating the facility mailing list, which may not contain a thorough list of people who are interested in the facility.

The requirements for the pre-application meeting and the notice at permit application would not apply to post-closure permits. Post-closure permit applications raise a narrower set of issues and a narrower range of alternatives. The public may be adequately involved through notices at the draft permit stage. Furthermore, the post-closure period does not involve the same ongoing relationship between the facility and the community as the operating period. EPA is requesting comments on whether current requirements are adequate to ensure public involvement, or whether today's proposed requirements for public notice at application submittal should apply to post-closure permits.

d. Applicability of the information repository. The information repository is a public participation tool that the permitting authority can use at any time during the permit process. As proposed, the permitting authority may require the facility to establish a repository during the permit review process for a new facility, or at any time during the life of a facility when the Director determines a repository is warranted due to significant public interest in the facility. The need for an information repository will be decided by the Director, based on decision criteria discussed elsewhere in today's preamble. It is important to have a repository requirement that the Director can adapt to different facility situations and public information needs. Thus, the Agency has allowed the Director the flexibility to decide whether and when a repository is established, for what activity, how long it must be maintained, and where it is housed.

5. Detailed Discussion on the Proposed Public Involvement Requirements

a. General considerations regarding public notices. EPA is proposing new requirements for public notice in order to address public concern that community members are sometimes unaware of hazardous waste permitting activities or that public notice about a facility comes too late in the RCRA process. EPA believes that appropriate public notice is necessary to fully inform communities and involve them in permitting decisions involving hazardous waste facilities. By appropriate public notice, the Agency means that sufficient information is provided in a timely manner to all segments of the public throughout the permit process. Towards this end, EPA is proposing additional public notices throughout the permit process. These new notices will require the permitting authority to notify the public when it reaches certain points in the permitting process (e.g., application submittal, prior to a trial burn). This provision will give the public the opportunity to become involved in the decision-making process. As a result, the public may become more informed about the various steps of the permit process and the time requirements of each step.

Similarly, a widely-distributed notice may reach interested individuals who otherwise may not have known about the opportunity to be on the facility mailing list. To address this issue, EPA is proposing requirements under § 124.31(c)(1) concerning the distribution of the public notice for the pre-application meeting. This notice will be the first activity required by the RCRA permit process; EPA believes that stronger requirements resulting in a wider initial outreach are appropriate at this juncture. EPA is not proposing that implementing agencies follow the new distribution requirements for subsequent notices. Such a requirement would be redundant since, as a result of the widely distributed notice of the pre-application meeting, the permitting authority would have a list of interested people that it could contact as part of the mailing list.

The Agency recognizes that the means by which a notice is effectively distributed is highly community-specific. The permitting authority may find any of a variety of distribution mechanisms effective, depending upon such factors as population density, geographic location, expanse, and cultural diversity of a community, when such mechanisms are used in conjunction with required notice activities. EPA has learned, through discussions with States, Regions, and outside parties (environmental and industry organizations), of a number of mechanisms for distributing notices. Facilities and agencies may voluntarily use the methods that are most practical for disseminating information throughout their community. Several of these methods that go beyond today's proposed requirements, and which may be voluntarily implemented, are discussed below:

Press releases. Permitting authorities and industry alike have used press releases to successfully alert the local community to specific activities. A press release to one paper may be picked up by other local papers with no cost to the original party. Press releases have the advantage of providing in-depth coverage of a subject in a forum that can be widely distributed within a short timeframe. 40 CFR 124.10(c) specifically cites press releases as a method that permitting authorities can use to promote public participation.

Local cable tv channels. Many communities run their own cable channels for local news and activities. This medium may be used to target a local audience, often at no charge. TV spots may be advantageous for delivering pertinent information about a hazardous waste facility directly to people at home. The permitting authorities may also use the stations to broadcast logistics for upcoming meetings.

Local community groups. The facility may enhance the distribution of information by including local community groups on the facility mailing list. Such groups may have a particular interest in hazardous waste issues and can be effective in circulating the information to a wider audience. Local religious establishments, for example, can be particularly useful in distributing information locally. Local Emergency Planning Committees (LEPCs), required under Section 301 of the Superfund Amendments and

Reauthorization Act (SARA), can also be an effective group through which to disseminate notices. LEPCs are composed of representatives from a variety of groups or organizations, for example, local elected officials, law enforcement, fire fighting, health, and transportation personnel, community groups, and broadcast and print media. Facility mailing lists can include other community groups, such as professional and trade associations, planning commissions, civic leaders, and special interest groups.

b. Requirements for the pre-application meeting. EPA is proposing that the facility provide public notification of the pre-application meeting between the facility and the public. This provision would apply to all RCRA facilities that submit a Part B Permit application for the first time. The facility will have the dual responsibility of providing appropriate notice and conducting the meeting.

EPA believes that the requirements for the pre-application meeting should apply to all RCRA TSD facilities. EPA emphasizes that the pre-application meeting is meant to be flexible, informal, and informative. Owners and operators of hazardous waste facilities, including owners and operators of small businesses, should be able to meet the proposed requirements for the pre-application meeting without undue burden. EPA estimates that the costs associated with the pre-application will be small. In addition, EPA believes that this approach will benefit the facility, as well as the public, in the long run since the public will gain greater understanding of the facility's plans and responsibilities. As stated above, earlier and more meaningful public involvement could streamline the permitting process, since issues and concerns will be raised at the initial point of the process.

EPA solicits public comment on whether or not the Agency should require facilities to hold a pre-application meeting and, if so, whether the requirement should apply to all facilities, or only particular facilities, such as facilities conducting specific waste management practices, managing certain kinds of waste, or accepting off-site waste. In addition, EPA requests comment on the proposed functions of the pre-application meeting as well as comments about the notice requirements for the meeting.

b.1. Providing notice of the pre-application meeting. The Agency is proposing this requirement because EPA is concerned that the existing mechanisms for providing public notice (found in 40 CFR part 124) may not work as effectively at the pre-application stage of the permit process as they do later in the permit process. The main reason for this is that the permitting authority generally does not develop the facility mailing list by the pre-application stage; it usually develops the list after the facility submits its permit application. Consequently, there is no mailing list for the facility to utilize. These initial outreach efforts will ultimately benefit the permit process by engaging interested individuals early in the process.

EPA is proposing to require that the applicant provide notice of the pre-application meeting to the public, including EPA and appropriate units of State and local government, in three separate ways. EPA has designed these requirements to ensure effective public notice for the meeting. As proposed under § 124.31(c)(1), two of these requirements are new approaches to providing public notice and apply only to the notice for the pre-application meeting. The third is a current requirement under § 124.10(c)(2)(ii). EPA believes that since the notice for the pre-application meeting is the first public notice in the RCRA permitting process and occurs so early in the process, i.e., possibly before a mailing list is developed, these additional requirements are necessary to ensure widespread notice so that the public is appropriately informed. All of the public notice requirements for the pre-application meeting must contain the information proposed under § 124.31(c)(2).

The first requirement proposes that the facility must place the notice not only in a paper of general circulation within the community where the facility is located, as currently required, but also in newspapers that cover each jurisdiction adjacent to that community. EPA believes this approach is necessary to ensure that the facility appropriately notifies neighboring jurisdictions in the event that a facility is located near a jurisdictional boundary. In these cases, people who live near, but across the county or state line from, a hazardous waste facility that is applying for a RCRA permit may not receive notice of the activity under the present scheme because the newspaper is not in general circulation across that jurisdictional line. As a result, these people may not learn about the facility until much later in the permit process or after the facility is permitted. This initial outreach requirement would avoid such a situation. Interested persons could respond to this initial notice either by attending the pre-application meeting or by signing up for the facility mailing list. In either case, the person would be on the list for subsequent notices that comply with existing requirements in § 124.10(c)(2) (including requirements for the facility mailing list).

In some states (especially in the western part of the United States), the geographic areas covered by a host county or adjacent counties can be very large. In these cases, the requirement for the facility to give public notice in adjacent counties may not be practical or useful. Therefore, in situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility, such that all potentially affected persons have the opportunity to receive notice. EPA requests comment on how to implement this alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

The required newspaper notices must appear as display advertisements within the newspapers. This provision clarifies the form in which the official public notice must appear in the papers. As defined by this proposed rule, a display ad must be of sufficient size to be seen easily by the reader.

EPA intends the display ad requirement to make information about the pre-application meeting more visible within the newspaper. The display ad must be placed in a section of the newspaper that the average reader is likely to see, or in a manner that otherwise gives the general public effective notice. Currently, most public notices related to RCRA permitting appear as legal notices. However, EPA proposes to change this practice for the notice at pre-application in response to public concerns that legal notices are not widely read.

EPA encourages facilities and permit writers, if it is within their means, to apply this requirement to other notices published in the newspaper. The requirements proposed in today's rule are in no way meant to inhibit additional public involvement activities that the owner or operator or the regulatory agency could carry out voluntarily.

The second proposed mechanism for enhancing public notice of the pre-application meeting is a requirement that the facility owner or operator post a sign on the facility property displaying information about the meeting. This requirement will give clear notice of the facility location, and activity the facility is, or will be, conducting. The posted sign must show the same information as

the other notices, except for the requirement to include a facility map, which is unnecessary. The sign must be large enough so that the wording is readable from the facility boundary; it should be located where it will be visible to the public, including passers-by. The Agency encourages facilities to post similar signs within the local community, where appropriate, to encourage people to attend the pre-application meeting. In some cases, the option of posting additional signs around the community may be a cost-effective way for the facility to communicate with the public.

The third requirement is that the facility owner or operator must provide a radio broadcast announcement of the pre-application meeting. This is a current mechanism for providing public notice in § 124.10(c)(2)(ii). The Agency is including it within today's proposed requirements for the pre-application meeting in order to maintain consistency with existing public notice requirements under § 124.10.

Over the years, EPA has received many questions from authorized states and the public concerning radio announcements. Today's proposal requires a radio announcement to be broadcast from at least one local radio station serving the community, which is the same as the current part 124 regulations. As mentioned earlier in the Equitable Public Participation section, EPA considers the community to be all residents in the vicinity of the facility who might be most affected by the facility's operations.

Facilities can, of course, go beyond the minimum requirement being proposed today. EPA provides the following suggestions as guidance for those facilities interested in going beyond the proposed minimum requirements. In some rural areas, community members may listen predominantly to one station; in this case, EPA recommends that the applicant use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., as defined by services such as Arbitron's Radio Market Definitions) and have competing radio stations. Where there is more than one radio station, the facility owner or operator should carefully consider the likely listeners of the radio stations in order to ensure a substantial listener audience. For example, if the facility is located within a predominately Hispanic-American community, the applicant should use the local Spanish language station as the vehicle for the notice.

Areas with many competing stations are more likely to have listener groups that may be delineated by, for instance, age, ethnicity, or income. In these situations, broadcasting the notice on several stations, or in more than one language, may be beneficial. In all cases, EPA suggests that the announcement occur at listening hours with a substantial audience, which will vary for each community as well as within listener groups. The facility may consult with radio stations and community members to determine the best times to broadcast the public notice.

The notice of the pre-application meeting is perhaps the most important of the permit notices, since it is the first notice of the permitting process for new or existing facilities. The applicant should make an attempt to ensure that all interested citizens are aware of the pre-application meeting. The new requirements proposed today—display ads, notices published across jurisdictional boundaries, and posted signs at facilities—are more likely to reach a wider audience than a single notice in the legal section of the paper.

In analyzing other approaches, such as applying the new pre-application notice requirements to all other RCRA public notices, EPA found that the requirements may become burdensome to regulatory agencies, who must publish a number of notices throughout the permitting process. (As proposed today, the facility bears the burden of the pre-application meeting requirements.) EPA's goal in proposing this approach is the efficient use of resources for effective public notice. EPA proposes a larger initial outreach effort to help establish a mailing list. By initiating a larger effort early in the process, people who desire to be put on the mailing list are included as early as possible in the permit process. The facility will conduct subsequent notices using the existing notice requirements, which have proven adequate when accompanied by a well-developed mailing list.

The Agency requests comment on the proposed requirements for public notice of the pre-application meeting. For example, EPA would like comments regarding the practicality or usefulness of these requirements and their application within the permitting process.

b.2. Conducting the pre-application meeting. Today's proposed rule requires the applicant to hold at least one informational meeting, open to all interested members of the public, before submitting a permit application. This meeting will provide earlier public involvement opportunities in the RCRA permitting process, and enable the applicant to explain facility plans and the scope of the project to the public. In addition, EPA intends this meeting to create a dialogue with the community, raise public awareness, determine public views and questions raised with respect to the facility, and provide the applicant with the opportunity to make changes to its application based on public comments. (The facility may choose to hold additional meetings to answer questions raised at the pre-application meeting.) It is appropriate for the facility to conduct the public meeting because the facility initiates the permit process and conducts business in the area. The permit applicant must give the public adequate notice, at least 30 days before the date, of the pre-application meeting.

The Agency believes that the meeting should be informal and informational. This approach is consistent with the preamble discussion of public meeting requirements for Class 3 permit modification procedures (see 53 FR 37912, September 28, 1988). However, in contrast to the requirements for Class 3 modifications, today's rule would require the facility to submit a record of the pre-application meeting, a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, to the Director. The facility must include this record as part of the permit application and, if required, the information repository. The record requirement will provide the public, especially people who are unable to attend the meeting, and the Agency with a summary of information and issues raised at the pre-application meeting. The proposed rule does not require the permitting authority to attend the meeting. The Agency believes that attendance by the permitting authority, in certain instances, may undercut one of the main purposes of the meeting, which is to open a dialogue between the facility and the community. In some cases, attendance by the permitting authority might be useful in gaining a better understanding of public perceptions and issues for a particular facility. However, it should always remain clear that it is a facility-lead meeting. EPA believes it is important for the public to understand that it is the facility's responsibility both to initiate the permit process, by submitting an application to EPA, and to inform the public of its intentions. EPA would like to solicit comments on whether the permitting agency should attend the pre-application meetings.

With regard to the nature of the public meeting, EPA intends to provide facilities with considerable latitude. Through discussions with community

relations experts from a variety of backgrounds, EPA has found that "public meeting" means many things to many people. In most cases, however, it appears that people view public meetings as being similar to public hearings. EPA would like to dispel the idea that public meetings must be similar to formal public hearings; rather, EPA encourages facilities to be creative in their approach towards conducting the pre-application meeting, in order to encourage constructive and open participation with people in the community. The facility may accomplish this goal through any of a variety of meeting formats. EPA further encourages innovation in the type of public meeting by allowing the facility to choose the medium by which it reports the record of the meeting to EPA, as long as the medium provides an adequate record of the meeting. For example, facilities may choose to tape-record discussions at the meeting or find another effective medium with which the public is comfortable.

Many guidance documents are available on how to conduct public meetings and community outreach. Among them are EPA documents Community Relations in Superfund: A Handbook (January 1992, EPA/540/R-92/009), RCRA Public Involvement Manual (September 1993, EPA 530-R-93-006), as well as publications by private interests. The applicant may wish to consult these or similar publications for appropriate guidance on how to conduct an appropriate meeting with the public.

Regardless of the guidance source, EPA believes that the facility, in meeting regulatory requirements, should also consider the following factors to conduct what EPA believes to be an appropriate and effective public meeting: first, the applicant should give special attention to process, logistics, content and trouble-shooting when preparing for a public meeting; second, the applicant should provide appropriate public notification, as required by § 124.31(c), identify all sectors of the community that the facility will potentially affect, as required by § 124.30(a), and provide outreach to interested citizens and officials. All these factors are important to ensure that the audience is representative of the community.

The facility should encourage public participation through selection of a meeting date, time, and place that are convenient to the public. The facility should select the date and time of the public meeting to correspond to times when the public is most available; this may require the facility to conduct the meeting after normal business hours. The applicant should make sure that the meeting place has adequate space and is conducive to the type of meeting that the applicant will conduct. The applicant should take care in the development of the content of the meeting to meet the requirement of "sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment" under proposed § 124.31(a). To meet the "sufficient detail" requirement, the applicant should have a clear meeting agenda that states the exact reasons for the meeting and the specific objectives of the meeting. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility (i.e., commercial or private), the location of the facility, the general processes involved, the type of wastes generated and managed, and implementation of waste minimization and pollution control measures. In addition, the applicant should provide information about risk to the public, where available.

Finally, trouble-shooting potential problems will help the meeting to run smoothly in the event of unplanned obstacles. Trouble-shooting may involve planning for equipment failures, a shortage of parking spaces, or demonstrations, as well as locating facilities for handicapped individuals.

c. *Requirement for public notice at permit application.* Today's proposal would also require EPA or the State to publish a public notice upon receipt of a permit application. EPA proposes that the permitting authority send the notice to everyone on the mailing list. These requirements are consistent with the notice requirements under §§ 124.10 and 270.42. Unlike the proposed pre-application meeting requirement, the permitting authority must also publish this notice for permit renewals (see Section A.4: Applicability of public involvement requirements, of today's preamble discussion).

Information requirements for the public notice will give people a clear opportunity to contact the appropriate parties for questions and suggestions, sign up on the facility mailing list, and locate the appropriate documents, such as the permit application, for review. The permitting authority must provide the name and telephone number of the facility and permitting agency contacts. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person. The permitting authority must also provide an address to which people can send requests to be put on the facility mailing list. EPA believes that the public should have this opportunity during the permit process, and that the notice at application is a good mechanism for announcing this opportunity. Today's proposed rule requires the permitting authority to provide the notice; however, EPA would like to solicit comments on whether the permitting authority or the facility should be responsible for providing the notice at application submittal. While a person may request to be put on the mailing list at any time during the permit process, EPA intends this requirement to ensure that the permitting authority alerts the public early in the permit process. Finally, EPA is requiring the notice to include specific information about the facility operations, facility location, and the location where the public may review and copy versions of the permit application and other important documents.

EPA believes that these requirements significantly increase the opportunities for, and the effectiveness of, public participation within the permitting process. The requirement for a public notice will tell the public when an application for a permit has been received by the permitting authority. It would also provide information on where the permit application is available for review by the public and, thus, would allow interested people to begin review of the permit application at the same time as EPA or the State authority. The public would have the opportunity to review all aspects of the permit application in its initial form, before EPA or the State review the application for completeness. The public has the opportunity to make suggestions and raise issues for consideration by the permitting agency at any time during the agency's review of the permit application. Consequently, the permitting agency will receive public input earlier in the permit process as well as later, i.e., after the proposal of the draft permit. Another benefit of requiring such a notice is that it may alert the agency to facilities generating high public interest. The public notice will highlight public attention concerning a hazardous waste facility. Public interest and concerns may be expressed to the permitting authority in the form of letters, phone calls, and requests to be put on the facility mailing list. This early stage could be one potential point where the Director may choose to require the facility to establish an information repository. Furthermore, by providing

important and timely information at the beginning of the permit application review stage, the permitting authority can better inform the public about the steps of the permit process and the amount of time required for each step.

EPA believes that the public input that the permitted authority will receive early in the process will assist in the review of the permit application and result in the development of a draft permit that is responsive to community concerns. Once the permitting authority completes the draft permit, or the notice of intent to deny the permit, and proposes it to the public, then the public has the opportunity to review that decision, including any changes that occurred to the original permit application, since they will be reflected in the draft permit. These changes could include changes in response to the public comments EPA may have received during its review of the permit application.

d. Requirement for an information repository. Proposed §§ 124.33(a) and 270.30(m) would provide the Director with explicit authority to require the permit applicant or permittee, respectively, to establish and maintain an information repository. The repository would allow interested parties to: (1) Access reports, plans, findings, and other informative material relevant to the facility and the particular issues at hand; and (2) receive information on appropriate opportunities for involvement during a variety of permitting decisions. EPA expects that the Director would consider requiring a facility to establish a repository in a limited number of cases where the community expresses a high level of interest. A high level of community interest could be demonstrated, for example, in such ways as written requests from members of the public, or press coverage. However, the final decision for requiring the repository is at the Director's discretion. The Director may also specify any appropriate time period for the repository.

As provided in proposed § 124.33(b), the information repository will contain all public information that the Director determines to be relevant to public understanding of permitting activities at the facility. In general, the Director would require the facility to make available those reports or documents that provide the most relevant information about the facility and the best technical basis for decision-making. The information repository could include some of the following items: copies of the permit application, technical documents directly supporting the application, maps (i.e., sketched or copied street map) of the proposed location of the facility, notice of deficiencies (NODs), or summary reports of ground-water and air monitoring results at the facility, if such reports exist for the facility location. The repository should also contain information on how the public may participate and become involved during the permitting process. For example, EPA may contribute a fact sheet that outlines public involvement opportunities within the permit process and how to be put on the facility mailing list. Similarly, the facility may provide information in the repository on any additional public involvement activities it chooses to conduct. Examples of background material the facility may maintain in the repository include copies of relevant RCRA regulations and related information, e.g., fact sheets. The facility may exclude from the repository any material it claims to be confidential business information (CBI). Examples of CBI could include trade secrets, commercial, or financial information whose general availability could cause substantial harm to the facility's competitive position. The contents and size of the information repository may differ among sites, depending upon the reasons for setting up the repository, the permitting phase of the facility, and the site-specific characteristics of the facility.

The facility is responsible for site selection and maintenance of the information repository. The facility should place the repository at a local public library, town hall, county courthouse, community college, public health office, or another public location within reasonable distance of the facility. In instances where such a location is not feasible due to the remote location of the facility, the Director may require the facility to establish and maintain the repository at some other suitable location. In most instances, the information repository should not be at the facility. Interested communities have expressed a greater comfort level with siting the repository at a public location, instead of within facility boundaries. The repository must also be open to the public during reasonable hours or accessible by appointment. Reasonable hours could include, for example, weekend and evening hours of access (e.g., beyond normal business hours), depending, among other things, on work schedules of the interested individuals, the degree of public interest in the facility permitting activities, the convenience of the location of the repository, and the timing of public meetings or hearings. In these situations, EPA encourages facilities to select a location that already has extended hours of operation, such as a local library.

EPA encourages facilities to establish the information repository at a location that has reasonable access to a photocopy machine, if possible. Such a location would be more convenient for the people who wish to make copies of any of the materials at reasonable cost. For example, some of the public locations mentioned previously should, in most cases, have a photocopy machine on the premises. If it is not possible, the facility may want to explore other options, such as providing extra copies of documents that people can keep without charge or at reasonable cost.

In cases where physical space to house the documents is limited, a potential solution for the facility, where resources allow and capability is available at the location, is to copy documents onto microfiche or CD-ROM. Either of these possible options requires little space and would discourage document theft or vandalism.

Under § 124.33(d), the Director will specify requirements that the applicant must satisfy in informing the public of the existence of the information repository. At a minimum, the Director will require the facility owner/operator to notify individuals on the mailing list when the facility establishes the repository. The Director may also require the facility to provide public notice in a local newspaper. As a practical matter, the facility may, in some cases, choose to provide the relevant information to the permitting authority so that it may include the information in other required notices. The facility owner/operator would identify the EPA or State office contact and a facility contact person to answer questions related to the repository. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person.

The information repository EPA is proposing today closely resembles the repository proposed under Subpart S of the Corrective Action Rule (see 30798 FR, July 27, 1990) and is similar to the repositories established at Superfund sites under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). EPA's CERCLA experience has demonstrated that the public's interest in nearby hazardous waste activities is served effectively by a repository. Without a local repository, the burden falls on

citizens to locate and contact the appropriate officials who are knowledgeable about the site in Regional EPA or State offices, which could be located far from the site.

There are three major differences between the information repositories in today's proposal and the repositories included in the CERCLA program. First, Superfund requires information repositories at all sites on the National Priorities List (NPL), whereas, under today's proposal, the Director would use his or her discretion on a case-by-case basis. All communities may not desire or request every option available for public involvement. In most situations, an information repository may not be necessary and could become an unnecessary resource drain for the local community hosting the repository. Providing discretion to the Director will allow the facility and community to use their resources in the most efficient manner. In making such a determination, the Director would consider the degree of public interest (which could, for example, be demonstrated through written requests from the public to set up a repository), as well as the proposed location of the facility, the proposed types and volumes of wastes to be managed, and the type of facility. Furthermore, the Director may consider requiring information repositories at certain Class 3 modifications or at other stages within a permit where there is a high level of public interest.

The second major difference between the CERCLA and proposed RCRA repositories is that CERCLA repositories for NPL sites generally house the administrative record for CERCLA actions. Under the RCRA permitting program, and as described in proposed Subpart S, EPA Regional offices, or authorized States, maintain administrative records, which provide documentation of the basis of EPA's decisions and other parts of the record, at Regional office location. Because the RCRA permitting record is already available for public inspection at a separate location, the Agency does not believe that it is necessary to duplicate the entire administrative record for RCRA facilities at information repositories. The administrative record developed during the permitting process is often large, and could become burdensome to the Agency and the facility if it were duplicated in its entirety in an information repository. In addition, the space required to house an information repository, if it were required to be a duplicate of the administrative record, may severely limit prospective repository locations in a community.

The third major difference between the CERCLA and proposed RCRA provisions relates to the point in the waste management process when an information repository is established and maintained. Information repositories are established at NPL sites to give the public the opportunity to keep informed during the cleanup process. On the other hand, the repository proposed for certain RCRA facilities could be established by the facility at any time during the RCRA permitting process or during the life of the facility. In either case, the facility will set up the information repository to provide information to the community about the specific issues at hand. Therefore, the Director may require the facility to operate the information repository during the permit application process only or the active life of a facility, whichever best applies to the facility and the community. For new facilities, this provision means that the Director might instruct the facility to establish an information repository before construction of the facility. EPA is concerned that the information repository for a RCRA facility could become cumbersome if the Agency prescribes specific content and duration requirements in a regulation. Therefore, EPA believes that the Director should designate timeframes and details for the contents of the information repository on a case-by-case basis, in keeping with the goal of enhancing public participation in the permitting process.

The Agency chose what it believes to be the most flexible approach, that is, one that allows permitting authorities to readily respond to community demands. However, the Agency recognizes that questions may exist regarding this approach and requests comment on several aspects of the information repository. First, the Agency seeks comments on making the information repository an optional, as opposed to mandatory, tool within the permitting process. Second, EPA solicits comments on making the repository mandatory for some types of units; for example, the Agency could require all commercial facilities or facilities managing certain types of waste to establish information repositories. Third, EPA requests comments on the location of the repository and the point in the permitting process when it might be appropriate for the Director to require certain facilities to establish or terminate a repository. Fourth, the Agency seeks comments on what documents the facility should include within the repository as a minimum, and the process by which those documents are selected.

B. Permit Modification Procedures in § 270.42

1. Purpose

The main purpose of this section of the rule is to clarify the combustion modification provisions found in Appendix I of § 270.42. EPA is aware that there has been some confusion over the description of modifications listed under section L.7 of Appendix I, which covers the shakedown and trial burn phases of operation for combustion units. Through today's changes, EPA intends to make these modification classifications easier to understand and implement. Today's proposal clarifies and describes the phases of shakedown and trial burn in more detail, thus, making it easier for the facility to distinguish between modification classifications. By making it easier for a facility to select the appropriate classification for each modification activity, the proposed rule will make compliance with the modification process easier.

This section also proposes minor revisions to § 270.42(d) of the modification procedures and addresses those modification requests that are not classified in the Appendix I table of § 270.42. Today's proposal clarifies how facilities may implement and utilize the provision for other modifications in § 270.42(d).

2. Background Summary

EPA first promulgated procedures for RCRA permit modifications in 1980 as part of the initial regulations establishing the RCRA permit program. This system of modifications consisted of two types: Major and minor. Major modifications followed the same public notice and comment procedures as for permit issuance, while minor modifications required only approval by the permitting authority. "Minor modifications" were defined as any modification contained in a short list in the regulations; all other modifications were deemed "major."

EPA gained experience in implementing these procedures and decided that the Agency could improve the modifications process. One of the Agency's primary concerns was that most modifications were processed under the major modification procedures since few modifications were listed as minor. Since many less consequential permit changes and facility improvements were subject to extensive "major" modification procedures, EPA found that facilities

were discouraged from making improvements to upgrade the facility to be more protective. At the same time, EPA and the States were diverting their resources to address minor modifications, instead of addressing modifications with greater environmental significance, or other permitting and enforcement actions. In considering how to address these concerns, EPA determined that the procedural structure needed modifying in order to classify the many activities that did not fall easily into only the major and minor categories.

EPA amended the procedures for facility-initiated permit modifications on September 28, 1988 (see 53 FR 37912). The goals of this rule were to allow for additional flexibility in processing permit modifications and to provide for an appropriate level of public involvement in the decision-making process. The main feature of these revised procedures was a system of three classes of permit modifications, ranging from Class 1 for the least significant changes to Class 3 for the most significant facility modifications.

EPA continues to believe that Agency and State permitting authorities must focus time, efforts, and resources on substantive changes to protect human health and the environment. With three classes of procedures, permitting authorities can classify modifications more accurately, according to their environmental significance, than they could under the former system. Individual examples of modifications are classified in a detailed appendix to the rule (Appendix I to § 270.42).

3. Technical Corrections

In today's rule, EPA is proposing certain technical corrections in §§ 270.42(a)(1)(ii), 270.42(b)(2), and 270.42(c)(2). One correction would change the reference for notifying appropriate units of state and local government in each of these paragraphs to § 124.10(c)(1)(x), in order to correct a typographical error. At present, these sections incorrectly reference § 124.10(c)(ix), which is the reference for notifying the facility mailing list.

EPA is also proposing to make a technical correction to § 270.42(b)(6)(i). In this paragraph, the term "notification request" should be changed to "modification request." It is clear from the preamble to the September 28, 1988 permit modification rule (see 53 FR 37916) that EPA intended that the deadline for EPA action be related to the date that the modification request is submitted to the permitting authority.

4. Unclassified Modifications

During the development of the September 1988 permit modification rule, EPA recognized that classifying all possible permit modifications under the items listed in Appendix I of § 270.42 would be impossible. Therefore, the Agency provided a procedure in § 270.42(d) to enable facilities to submit modification requests for changes that are not specifically listed in Appendix I. For these unclassified modifications, facilities must either use the Class 3 modification procedures or, alternatively, request that the Agency make a determination that the activity is either a Class 1 or 2 modification. In general, requests for a classification determination would be attached to the modification request. In making its determination whether to process the request as a Class 1, 2, modification instead of a Class 3, the Agency would consider the similarity of the specific modification to others listed in Appendix I and the criteria listed in § 270.42(d)(2).

After several years' experience, EPA has found that very few unclassified modifications have been processed using this procedure. EPA believes that both facilities and permit writers may be restricting themselves to only the classification examples that are in Appendix I. EPA is also concerned that in those cases where § 270.42(d) is used, the Class 3 modification procedure may be automatically selected, without consideration of whether the permit activity is less significant and should be reclassified to a lower category.

While EPA believes that Appendix I offers a good starting point for classifying modifications, facilities and the permitting authority should both make additional efforts to use the flexibility in § 270.42(d) when proposing modifications. Use of this flexibility will allow permit writers to better focus their efforts and resources on modification procedures that are necessary and appropriately tailored to the substantive changes proposed. Therefore, EPA believes that facilities should use the flexibility contained in § 270.42(d) when their site-specific permit changes are not listed in the Appendix I table. To address this situation, EPA is proposing to modify the wording in § 270.42(d) to clarify that unclassified modifications can be processed under Class 1 or 2 procedures, if this lower classification is more appropriate. EPA is also proposing to add a notation to Appendix I that instructs facilities to use the procedures in § 270.42(d) if a proposed modification is not listed in Appendix I.

In addition, EPA would like to clarify that the temporary authorization provision in § 270.42(e) may be used by the facility, subject to approval by the permitting authority, to implement unclassified modifications as well as classified ones. In other words, the permitting agency may grant a temporary authorization, without prior notice and comment, for activities that are necessary for facilities to respond promptly to changing conditions to be protective of human health and the environment. Temporary authorizations have a term of up to 180 days; the permitting agency may grant temporary authorizations for Class 2 or 3 modifications that meet the criteria in § 270.42(e), including compliance with the part 264 standards. Activities that will be completed before the 180 day term expires do not require a modification request. If a facility knows up front that the activity will take longer than 180 days to complete, it should submit a modification request at the same time as its request for temporary authorization.

5. Revisions to Appendix I of § 270.42

RCRA permits for new incinerators and boilers and industrial furnaces (BIFs) address four distinct phases of operation after construction. The four phases are: Shakedown, trial burn, post-trial burn operation, and final operation, which lasts for the duration of the permit. The permitting authority establishes operating conditions for each of these phases in the permit.

The shakedown phase of operation lasts from the initial start up after construction until the trial burn. The shakedown phase prepares the unit for the trial burn. During this period, possible mechanical difficulties are identified and the unit reaches operational readiness by achieving steady-state operating conditions immediately prior to the trial burn. Federal regulations limit the shakedown period to 720 hours of operation using hazardous waste feed; the permitting authority may allow one additional period of up to 720 hours with cause. Permit conditions limit operations during this period; the permit sets hazardous waste feed and other waste management practices and requires the facility to monitor certain key operational indicators.

The trial burn, which typically lasts several days, is the actual testing that the facility conducts, with permitting agency oversight, to (1) determine whether a combustion unit can meet the performance standards required by the

regulations and the permit, (2) establish the final facility operating conditions for the term of the permit, and (3) provide data on which the permit authority can base a risk assessment. The trial burn plan contains the parameters for conducting a trial burn. The trial burn plan is part of the original permit for new facilities and must be approved by the permitting agency before the facility can conduct a trial burn. The facility often tests several sets of operating conditions during the trial burn. The conditions are designed in order to determine the range of operating conditions where the unit meets the performance standards. For example, the facility may set one trial burn condition to determine what the maximum hazardous waste feed can be. The trial burn demonstrates the range of operating conditions that allow the facility to comply with the performance standards. The permit writer uses the results of the trial burn to define the operating conditions that the facility will operate under during the permit term.

The post-trial burn phase starts after the trial burn and lasts an average of 3 to 9 months. The permit specifies operating conditions that apply during this phase. Federal regulations require the permittee to analyze the results of the trial burn and submit them to the Agency within 90 days of completion of the trial burn, or later if approved by the Director. Also during this period, the facility may submit, and EPA may process, a permit modification to revise the final operating conditions to reflect the results of the trial burn and any other information. This phase ends once the permitting agency and the facility complete all necessary permit modifications and the final operating conditions take effect.

The final operating conditions are effective for the life of the permit, unless the facility's permit is modified pursuant to 40 CFR 270.41 or 270.42. The permit writer bases the conditions on actual trial burn data that reflect the conditions under which the facility met the performance standards during the trial burn.

a. Structure of today's proposal. Confusion has existed, at times, over the descriptions of modifications for certain items listed in section L of Appendix I to § 270.42, which covers incinerators and BIFs; in particular, the confusion has concerned changes during the shakedown period of operation and trial burn. How to interpret these modification classifications may be unclear in certain situations. In order to avoid further confusion or potential delays in determining these classifications, the Agency is proposing to reorganize and clarify Section L.7 of Appendix I.

Currently, Appendix I of § 270.42 places items regarding the shakedown period, trial burn plan, and post-trial burn operation into the same section, i.e., section L.7. EPA believes that placing those items regarding the shakedown period in one section and items concerning the trial burn plan into another section, along with describing each item more precisely, will clarify the intent behind each description. This reorganization will make it easier to classify individual modification requests and ensure that the permitting agency processes the requests under the appropriate procedures. EPA proposes today that all modifications regarding the shakedown period will remain in section L.7. and all items regarding the trial burn will move to new section L.8. The existing section L.8. will become section L.9. An explanation of the proposed revisions to sections L.7. and L.8. of the Appendix follows.

In this proposal, Class 2 will remain the highest classification for changes to the trial burn and shakedown period permit conditions. Further, the permitting agency will continue to process many changes under the Class 1 procedures, with prior Director approval. One reason for these classifications is the short period of operation for both the shakedown and trial burn phases. The permitting authority must be in a position to respond quickly to requests for changes that are necessary to ensure thorough testing of the unit. In addition, operating conditions during the shakedown period are generally more restrictive than the final operation conditions.

b. Shakedown. Appendix I to § 270.42 currently classifies modifications addressing the shakedown period for a permitted combustion unit in items L.7. a. and b. EPA today proposes to simplify item L.7.a. by applying it only during the shakedown period and moving the references to the trial burn plan and post-trial burn operation to newly proposed section L.8. The permitting agency should not process under L.7.a. any modifications that are classified in other items in Appendix I. Today's proposed rule will not change item L.7.b., which allows the Director to authorize an additional 720 hours of operation as a Class 1 modification.

EPA also proposes to reclassify proposed item L.7.a. as a Class 1 permit modification, with prior approval of the Director. Our basis for this change is that the narrower scope and limited duration of the shakedown period means that a facility's activities would be less significant than the activities found under the existing L.7.a. One example of a modification under proposed item L.7.a. would be a change in combustion temperature to increase the unit's efficiency. The purpose of the shakedown period is to prepare the unit for the trial burn and, thus, any changes made during the shakedown period would not affect long term operation. The shakedown period can last no longer than 720 hours of operation, with only one extension possible. As stated previously, modification items related to the trial burn will now be addressed by the permitting authority under proposed section L.8.

c. Trial burn. Today, EPA is proposing to create a new section L.8. in Appendix I to address modifications to permit conditions during the trial burn. These conditions are contained in the approved trial burn plan, which is a part of the RCRA permit. EPA has structured this section to progress from changes before any trial burns are completed to those after a trial burn has been conducted, including changes made to reflect the results of a successful trial burn. The format of the new section L.8. is as follows.

EPA is proposing to revise Appendix I to address changes to the trial burn plan before the trial burn is complete (items L.8.a. and L.8.b). Under the proposed scheme, the permitting authority will consider changes to the trial burn plan a Class 2 permit modification, unless they are minor, in which case they will be Class 1, with prior Director approval. One example of a minor change would be an increase in the secondary combustion chamber temperature for a trial burn condition that is testing the destruction and removal efficiency for organic wastes One example of a major change would be an increase in the waste feed rate. Please note that classifying changes as minor with regard to the trial burn is not a new requirement; it was previously listed under item L.7.c. However, to reflect the fact that the trial burn conditions are contained in the trial burn plan, EPA is deleting any references to "operating requirements set in the permit" from the modification table.

EPA expects that permittees may request technical changes in the trial burn plan under L.8.a. while the permitting authority is on-site immediately before, or during, the trial burn. These changes address unanticipated issues and are often necessary for effective and protective operation and testing during the trial burn. A representative of the permitting authority, usually the permit writer, is

typically at the facility during the trial burn. The Agency encourages permit writers and facilities to write trial burn plans with the flexibility to accommodate alterations during the trial burn. The permitting authority can expedite the modification process by delegating approval authority to one of its agents. The permit itself can also specify what level of permitting agency staff has authority to approve these minor changes. In deciding whether to allow such changes on-site, we encourage the permit writer to consider the criteria contained in the February 16, 1989, Trial Burn Observation Guide. Of course, the final permit conditions would limit the permittee to those conditions that met the performance standards during the trial burn.

After a facility conducts a trial burn and submits the results to the permitting agency, the facility may request another trial burn. The facility must, then, submit a new trial burn plan. EPA is proposing to revise Appendix I to clarify this situation. Item L.8.c. specifically relates to situations where the facility did not meet the performance standards set in the trial burn plan and the facility proposes another trial burn, or portions of a trial burn, at improved conditions. Item L.8.c. addresses conducting additional tests to replace one or more of the failed conditions of a trial burn. Before the facility can conduct these tests, it must revise the conditions in the trial burn plan and the permitting agency must approve the revisions through a permit modification. In general, the permitting agency will not approve the modification request to conduct another trial burn unless the facility has provided a sound technical basis, demonstrating that the revised operating conditions are likely to meet the performance standards set in the permit.

EPA is also proposing to classify item L.8.c. as a Class 2 permit modification. The Agency recognizes that this classification represents a change from the preamble language in past incinerator technical regulations. An early incinerator rule preamble states that "if compliance has not been shown and an additional trial burn is necessary, the permit may also be modified under § 122.17 [old minor permit modification language] to allow for an additional trial burn" (See 47 FR 27524, June 24, 1982). This 1982 preamble language describes a trial burn retest of a failed condition. Since 1982, EPA has gained considerable experience regarding trial burns. EPA now believes that if a facility does not meet the regulatory performance standards during the trial burn, then the public needs to be involved before the facility revises the trial burn plan and conducts another test, because the facility's failure under certain conditions may raise concerns. Therefore, EPA believes that the additional public participation requirements of the Class 2 procedures are appropriate for this item. (See proposed § 270.74(c)(7) for the analogous procedures for interim status combustion facilities.)

Furthermore, EPA is proposing to add item L.8.d to address changes to the permit conditions that are in effect during the limited period called the post-trial burn period. (These modifications would currently be addressed under item L.7.a.) Because any changes during the post-trial burn period will be limited in duration, similar to those during the shakedown period, EPA is also reclassifying post-trial burn period modifications from Class 2 to Class 1 permit modifications, with prior approval of the Director.

For the last item in this section of Appendix I, EPA is proposing to move existing item L.7.d. to L.8.e. This item describes revising the final operating conditions to reflect the results of the trial burn. Changes in the final permit should reflect the operating conditions under which the facility met the required performance standards during the trial burn. EPA does not propose changes to the wording of this item.

C. Requirements Regarding the Trial Burn

1. Purpose and Applicability

The purposes of this section of the proposed rule are (1) to make the permitting procedural requirements for interim status combustion units more equivalent to current permitting requirements for new units, particularly with regard to trial burns, and (2) to clarify some administrative permitting procedures for combustion units. In addition, this section contains proposed requirements that will provide for more public involvement opportunities, both earlier in the combustion permitting process and at key points throughout the process.

The requirements in this section apply only to combustion units at both interim status and permitted facilities.

2. Summary of Proposed Approach

EPA is proposing today to create a new § 270.74, which will contain permitting procedural requirements for interim status combustion units. This proposed new section is a consolidation of §§ 270.62(d) and 270.66(g), which currently contain permitting procedural requirements for interim status incinerators and BIFs, respectively. Proposed § 270.74 is virtually identical to §§ 270.62(d) and 270.66(g), except where EPA is proposing additional permitting procedural requirements for interim status units. EPA intends the additional requirements to make the procedural requirements for interim status units more equivalent to the permitting procedural requirements for new units, and to expand public involvement opportunities during the trial burn phase. The flow chart shown in Figure 2 indicates the points in the permitting process where the proposed activities would occur. For instance, the administrative procedural changes EPA is proposing in § 270.74 will require interim status facilities to submit a trial burn plan with their initial Part B applications. Section 270.74 further states that the permitting agency must approve the trial burn plan before the facility conducts the trial burn. These proposed explicit requirements will ensure that interim status facilities conduct trial burns in accordance with approved plans, as do permitted facilities, and do not perform the trial burns before submitting their applications. In another permitting procedural change, EPA proposes to clarify the Director's authority to allow additional trial burns and to deny a permit to an interim status unit if the Director does not believe that the unit is capable of meeting performance standards.

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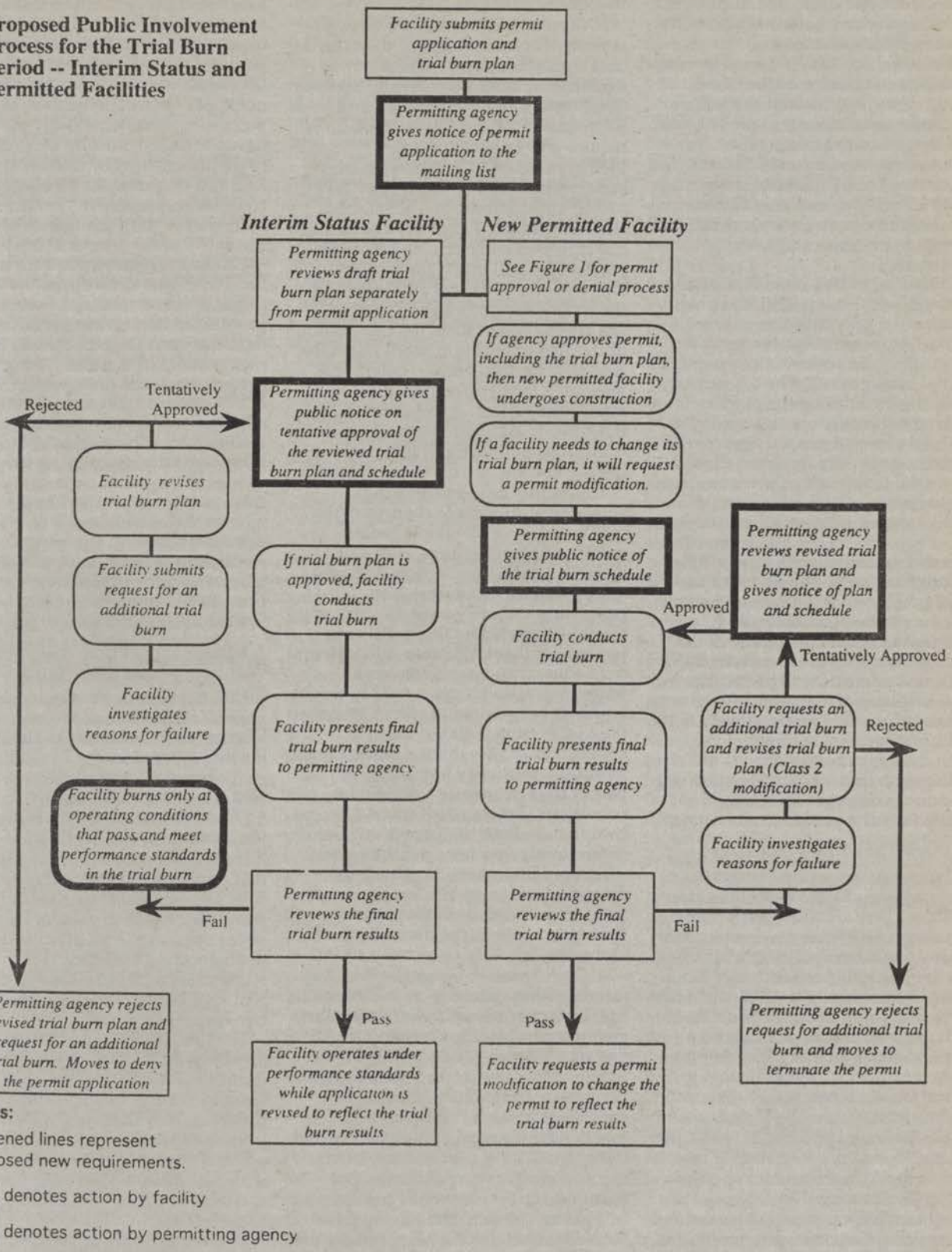
FIGURE 2

Proposed Public Involvement Process for the Trial Burn Period -- Interim Status and Permitted Facilities



Notes:

Darkened lines represent proposed new requirements.

denotes action by facility

denotes action by permitting agency

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EPA is proposing a new regulatory requirement, not addressed in previous regulations, which pertains to post-trial burn conditions at interim status combustion facilities. EPA is proposing that, upon completion of the trial burn, interim status facilities must operate only under conditions that passed and were demonstrated to meet the performance standards of § 264.343 (for incinerators) or §§ 266.104 through 266.107 (for BIFs), and only if the successful trial burn data are sufficient to set all applicable operating conditions.

Concerning public involvement, the Agency is proposing additional public participation opportunities in the combustion permitting process by requiring public notices at key points in the trial burn process. The Agency would like to build on the public involvement requirements in today's proposed rule and expand them to the trial burn stage. The Agency believes that public involvement opportunities should continue beyond the initial permit application stage and throughout the permitting process. For instance, the proposed rule requires the permitting authority to give public notice of the actual trial burn for both interim status and new combustion facilities. It is important to inform the public of the pending burn and give members of the public an opportunity to participate in this later phase of the permitting process. As mentioned previously in the public involvement segment of the preamble, expanded public participation in the RCRA program and decision-making process is a high priority for the Agency.

3. Current Trial Burn Procedures

Trial burns are an important step in the permitting process for combustion facilities. There are differences in the permitting process for new and interim status combustion facilities, which stem from the original composition of the regulated community in 1980 when EPA first promulgated the RCRA Subtitle C regulations. At that time, Congress granted existing facilities interim status if they complied with notification and application requirements, so they could continue operating while pursuing a permit. Anyone proposing a new facility now had to obtain a permit prior to construction. This distinction between existing and proposed facilities led to differences in the permitting procedural requirements for combustion units. For example, existing combustion facilities that have interim status must conduct a trial burn prior to permit issuance, whereas proposed facilities must obtain a permit before they may construct the combustion unit and then conduct a trial burn.

a. Current trial burn procedures for permitted combustion facilities. The trial burn procedures for new combustion units are currently set forth in § 270.62(b) for incinerators, and § 270.66(c) for BIFs. These regulations require new hazardous waste incinerators and BIFs to submit trial burn plans with their initial Part B permit applications. The actual trial burn is conducted after: (1) The public has reviewed and commented on the permit application; (2) the permitting authority has reviewed and approved the permit application; and (3) the facility has constructed the combustion unit. The permitting authority uses the results of the trial burn to determine whether a facility can meet the applicable performance standards and, if it does, to establish the final operating conditions in the permit that enable the facility to comply with those standards.

The facility or the permitting authority must initiate changes to the trial burn plan through the permit modification procedures in §§ 270.41 through 270.42 (see Section B. Permit Modification Procedures). The permitting authority must approve any modifications before the facility can implement them. Where results of a trial burn show non-compliance with performance standards, a facility would typically be required to either: (1) revise the trial burn plan to test new conditions; or (2) submit a request to the permitting authority to modify the permit to permanently exclude the conditions that resulted in non-compliance. Both the permit review/determination process and the permit modification process have built-in opportunities for public involvement, including procedures for appealing decisions made by the permitting authority.

b. Current trial burn procedures for interim status combustion facilities. The trial burn procedures for interim status combustion units are currently in §§ 270.62(d) and 270.66(g). These requirements are not as detailed as the requirements for new combustion facilities, although it is common practice for owners/operators of interim status facilities to follow many of the requirements for new facilities. For example, the interim status regulations in §§ 270.62(d) and 270.66(g) require facilities to submit the results of the trial burn before permit issuance, but do not explicitly state that facilities must receive permitting agency approval of the trial burn plan before conducting the burn.

The procedures for interim status and new combustion facilities differ in other areas. Contrary to permitted facilities, interim status facilities do not have a permit during the trial burn stage; thus, the permit modification procedures do not apply. As a consequence, the permitting agency currently does not have the same authority to regulate post-trial burn changes by interim status facilities as it does for new combustion facilities, especially in the case of incinerators [BIFs are more highly regulated under interim status].

Unlike the requirements for new facilities, there is no opportunity for public involvement in the permitting process for interim status combustion facilities until after the facility has conducted the burn and the permitting agency issues the draft permit.

EPA believes that many of the requirements for new combustion facilities are appropriate for interim status facilities; the Agency proposes to change the regulations to apply some of these requirements specifically to interim status facilities. It is the Agency's intent, in changing the regulations, to ensure protection of human health and the environment and provide a greater opportunity for public involvement in the permitting process.

4. Discussion of Proposed Permitting Requirements for Trial Burns

EPA is proposing to consolidate the permitting procedural requirements for interim status combustion facilities by moving the incinerator and BIF interim status permitting requirements, found in §§ 270.62(d) and 270.66(g), to proposed § 270.74. In addition, EPA is proposing to amend these requirements to make them more equivalent to the permitting requirements for new combustion units. EPA believes that consolidating the permitting requirements for interim status combustion facilities and distinguishing them from the requirements for permitted facilities will simplify the interim status trial burn process.

The consolidation and movement into proposed § 270.74(a) and (b) will not change the majority of the regulatory language in the existing provisions. However, EPA is proposing additional language that will make interim status permitting procedures more consistent with new facility permitting procedures and expand the opportunities for public participation.

EPA is also revising provisions for submitting data in lieu of a trial burn, § 270.19 for incinerators and § 270.22 for BIFs, to reflect actual Agency practice. As currently written, this waiver, which the permitting agency

can grant to either permitted or interim status units, could be seen as relatively open-ended; yet, in actual practice, permitting authorities have allowed facilities to use the provisions only under a narrow range of circumstances. EPA believes that granting the waiver only under a narrow range of circumstances is appropriate for the reasons discussed below and, therefore, is proposing to revise this provision to specifically restrict application to this narrow range. This revision to the regulatory language will ensure consistency among permit writers. It could also benefit facilities in the following way. The proposed rule will make explicit the strict circumstances under which a permitting agency will grant a waiver. Once a facility knows these circumstances, it will not misuse its resources in compiling a waiver request that the permitting agency will not grant; instead, the facility can focus its resources on developing a trial burn plan.

EPA is concerned that units constructed at different locations at different times, or with slight design or operating differences, may not perform in an identical manner. For example, if the locations are at different altitudes, the differences in atmospheric pressure could affect the performance of the units. In addition, there would likely be different operators running the units at different locations; thus, the units may not be operated in an identical manner.

The Agency believes that the theory of submitting data from other units in lieu of conducting a trial burn is sound; however, sufficient data is not available to ensure that the theory could be applied to real world situations without imposing strict limitations. EPA believes that most combustion units will need to conduct trial burns in order to develop operating conditions that ensure compliance with the performance standards.

To this end, EPA is proposing today to codify EPA's current policy by making the following changes: (1) Replace "sufficiently similar" with "virtually identical"; and (2) specify that the units must be located at the same facility. The "data in lieu of" provision, therefore, would not apply to mobile treatment units when moved from site to site, since they would not be located at the same facility.

a. Submittal of trial burn plans for interim status facilities. Today's proposed rule would require interim status hazardous waste incinerators (proposed § 270.74(a)(1)) and BIFs (proposed § 270.74(b)) to submit a trial burn plan with their initial Part B permit applications. EPA believes that the trial burn plan for interim status facilities should be subject to public notice and available for review with the initial Part B application, as it is for new facilities seeking permits. EPA's objective in proposing these revisions is to involve the public much earlier in the interim status facility permitting process than current regulations require.

EPA intends that today's requirements regarding submittal of the trial burn plans for interim status facilities will: (1) Specify the point in the permit process when the facility submits the trial burn plan, which will be the same point as for new facilities; and (2) explicitly provide that interim status facilities must conduct the burn in accordance with an approved plan

Since EPA is proposing a specific point for trial burn plan submittal in the proposed rule, i.e., with the Part B application, the Agency is deleting the current provisions that refer to the trial burn plan submittal (§§ 270.62(d) and 270.66(g)).

b. Approval of trial burn plans for interim status facilities. In § 270.74(c)(1), EPA is explicitly requiring that any interim status combustion facility that seeks a permit must obtain the Director's approval of the trial burn plan before conducting the trial burn. EPA is also proposing, in § 270.74(c)(4), that the Director, after approving a trial burn plan, must specify a time period during which the facility shall conduct the burn. EPA adds this latter requirement to ensure that facilities conduct trial burns in a timely manner. The Agency believes that requiring the permitting agency's approval of interim status trial burn plans will ensure that the facilities submit plans that reflect, and the permitting authority reviews the plans in the context of, current EPA policy and guidance. EPA also believes that today's proposed requirements will ensure that, in most cases, the burns will supply adequate data and information to set permit operating conditions. This proposed requirement for interim status facilities is equivalent to the permitting procedures for new facilities seeking permits.

It should be noted, however, that unlike the procedures for new facilities, approval of the trial burn plan for interim status facilities is on a separate track from the rest of the permit application. As mentioned earlier in this preamble, a new combustion facility must receive a permit before building the combustion unit and conducting the trial burn. Review and approval of trial burn plans for these facilities is concurrent with review and approval of the entire permit application; the trial burn plan is just one of many components. However, for interim status facilities, the permitting authority does not issue the draft permit, or the notice of intent to deny the permit, until after the facility conducts the trial burn. Since facilities must conduct the burn in accordance with a plan approved by the permitting agency, it is clear that the plan must be on a separate approval track from the rest of the permit application. Furthermore, interim status facilities typically must revise their permit applications to reflect the results of the burn, so that the conditions set in the permit can be based on conditions known to ensure compliance with the performance standards.

c. Notices of trial burns. In today's proposed rulemaking, EPA is seeking to expand opportunities for public involvement during the trial burn phase of the combustion permitting process for both new and interim status facilities. EPA requests comments on whether the facility or the permitting authority should be responsible for publishing the public notices discussed in the following sections.

c.1. Permitted combustion facilities. EPA is proposing, in § 270.62(b)(6) for incinerators and § 270.66(d)(3) for BIFs, to require the Director to send a notice of the expected trial burn schedule to all persons on the mailing list and to appropriate units of State and local government. As mentioned previously in the preamble, the trial burn plan is available for public review at other points in the permitting process (e.g., at application submittal, at draft permit issuance, and at final permit determination). Thus, unlike the notice requirement for interim status facilities, explained in the section below, the notice of the trial burn schedule for permitted facilities does not refer to the trial burn plan.

EPA recognizes that, in a limited number of situations, circumstances beyond the control of the facility or the permitting authority could delay a trial burn. It is not EPA's intent, in these limited situations, to require an additional notice with a revised burn schedule.

The notice must contain the following information, specified in §§ 270.62(b)(6) or 270.66(d)(3): (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the approved trial burn plan and any supporting documents are available for review; and, (4) the expected time period during which the facility is scheduled to conduct the trial burn. Including this information in the notice enables members of the public to

speak with a person who is knowledgeable about the trial burn plan, and to be aware of an imminent trial burn in their community.

c.2. Interim status combustion facilities. In § 270.74(c)(3), EPA is proposing notice requirements for interim status facilities that are similar to the requirements for permitted facilities. The proposed rule will require the Director to send a notice to all persons on the mailing list and appropriate units of State and local government, informing them of the proposed approval of the trial burn plan and the expected trial burn schedule. The Agency is requiring this notice before the permitting authority approves the plan in order to provide an additional opportunity for the public to review the final draft plan. It should be noted that, for interim status facilities, the Director's decision to approve the trial burn plan is not subject to administrative appeal.

EPA recognizes that the draft plan submitted with the initial Part B application may differ significantly from the final version that the permitting authority approves. EPA wants to ensure that the public has a chance to see the revisions prior to approval and the actual burn. EPA would like to solicit comments on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on the draft trial burn plan as part of the draft permit process.

Currently, there are less public involvement opportunities for interim status facilities than there are for permitted facilities, with regard to the review of trial burn plans. As mentioned previously, for permitted facilities, the public has the opportunity to review the trial burn plan at both the application and draft permit phases before a trial burn occurs.

The notice must contain the information specified in proposed § 270.74(c)(3). The notice should include the following: (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the draft trial burn plan and any supporting documentation are available for review; and (4) a schedule of activities that are required prior to permit issuance, including the date by which the Director expects to approve the plan and the expected time period during which the facility is scheduled to conduct the trial burn and submit results to the Director (refer to proposed § 270.74(c)(4)). Including this information in the notice enables the public to speak with a person who is knowledgeable about the trial burn plan, receive or review additional information, and learn of an imminent trial burn in their community.

As stated earlier, interim status facilities will conduct the trial burn prior to permit issuance, as required by current regulations. Although the public will have an opportunity to review the trial burn plan, since it must be submitted with the initial Part B application, in accordance with today's proposed requirements in § 270.74(a) or (b), a significant amount of time may elapse before the Director approves the plan and announces the facility's expected schedule for the burn. EPA believes that it is important to inform the public of the Director's proposed approval of the trial burn plan, separate from the rest of the Part B permit application, and the anticipated time period for conducting the burn. Again, this is consistent with the Draft Combustion Strategy goal of promoting public involvement in the trial burn stage.

d. Post-trial burn period at interim status combustion facilities. In today's rule, EPA is proposing that interim status combustion facilities be subject to the performance standards of § 264.343, for incinerators, or §§ 266.104 through 266.107, for BIFs, upon completion of the trial burn. During the post-trial burn period, interim status facilities must operate only under conditions that passed and were demonstrated to meet these performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions. EPA has provided information, in its June 1994 Guidance on Trial Burn Failures, for determining whether conditions resulted in non-compliance and under what circumstances successful data from the trial burn is sufficient to set all applicable operating conditions.

This proposal is more stringent than current regulations and practices. Currently, no regulations provide for setting post-trial burn conditions at interim status facilities. EPA believes that these proposed regulations will give the permitting agency the direct authority it needs to restrict these interim status facilities' operations to ensure that they are in compliance with the basic performance standards applicable to permitted facilities during the post-trial burn period. Establishing these requirements will ensure that interim status combustion facilities are operating in a manner that is protective of human health and the environment during the post-trial burn period.

This proposed requirement for interim status facilities is consistent with the post-trial burn requirements for permitted facilities. It is also consistent with EPA's draft model permit (September 1988), which has wording for the permitting agency to incorporate into combustion permits regarding temporary restriction of operating conditions following the trial burn.

Today's proposed rule supports and builds upon the language contained in the draft model permit. EPA is proposing that if the trial burn data for an interim status combustion facility show non-compliance with any set of the performance standards, then the facility will be required to (1) immediately cease operating under the condition(s) that resulted in non-compliance and (2) notify the Director. The facility may only continue operating if there are enough successful data from the trial burn to set all applicable operating conditions, and the facility is able to modify its design and/or limit its operating conditions to operate within the performance standards.

For example, one component in establishing a complete set of operating conditions is determining a maximum and a minimum combustion temperature. A maximum temperature is important for the metals volatilization standard; a minimum temperature is important for the destruction and removal efficiency (DRE) standard. For the sake of simplicity, this example assumes that the facility tested under only two temperature conditions, a high and low temperature, and that all other variables remained constant. By setting minimum and maximum temperature limits, the test burn can establish an operating "envelope," in other words, a range of temperatures within which the facility can operate safely in compliance with the performance standards. If the trial burn results show that the high temperature was successful, but that the low temperature was not sufficient to meet performance requirements, then there may not be enough successful data to set all applicable operating conditions. In this example, the facility would be required to stop operating.

On the other hand, following up on the above example, a facility may want to run tests over a range of temperatures in order to avoid shutdown. By running multiple temperature tests, the facility could attempt more conservative tests, as well as tests that would push the combustion unit's operating envelope. For instance, a facility may plan to conduct multiple tests to establish its minimum operating temperature. Thus, a facility may choose to test at two

temperatures, e.g., low and medium. If the trial burn results show that the low temperature could not meet the performance standards, but the medium temperature did, then enough successful data would exist to set all applicable operating conditions. In this scenario, the facility would restrict its operations to burn between the medium and the high temperature during the post-trial burn period and, thus, would continue operating within the performance standards.

EPA intends for the facility to be responsible for restricting its operations if any of the trial burn data show non-compliance with performance standards. If the facility wishes to continue operating under restricted conditions during the post-trial burn period, it must provide to the Director a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. EPA is proposing to require facilities to submit this information with the trial burn results. As currently required in §§ 270.62(b)(7) and (8) for incinerators, and 270.66(d)(3) and (4) for BIFs, facilities must submit the results of the trial burn and any data from the trial burn within 90 days of conducting the burn. As part of the proposed consolidation of the permitting procedural requirements for interim status combustion facilities, EPA has also reiterated this requirement by incorporating it, by reference, into § 270.74(c)(5).

EPA is proposing, in § 270.74(c)(6), to give the Director the discretion to further restrict operating conditions during the post-trial burn period to ensure that the unit is operated within the performance standards. The Director will make a determination on the need for further restrictions after reviewing the trial burn data and the preliminary explanation submitted by the facility within 90 days of the trial burn. The Director will inform the facility, in writing, of any operational restrictions that he or she is imposing on the facility beyond those listed by the facility in its preliminary explanation.

e. Additional trial burns. The existing permit modification procedures (§ 270.42) contain provisions to address additional trial burns at permitted combustion facilities. As mentioned previously, public involvement opportunities are built into the permit modification procedures. The procedures require the permitting authority to notify the public when any change is made to the existing permit through these procedures. Since the permit modification procedures do not apply to interim status facilities, EPA is proposing, in § 270.74(c)(7), to specify requirements for additional trial burns at interim status combustion facilities. As discussed in the previous section, if any results of a trial burn at an interim status combustion facility show non-compliance with any set of the performance standards, the facility must restrict its post-trial burn operations to conditions that passed and demonstrated compliance with performance standards. At this point, there are two potential courses of action a facility may follow. On one hand, the facility may choose to revise its Part B application to exclude those conditions. A facility that opts for this course of action is, in essence, choosing not to pursue those conditions in its final permit. For example, if the facility failed conditions relating to burning of aqueous wastes, it may decide to restrict its long-term operations by handling only non-aqueous wastes; the facility would then reflect that decision in its permit application.

Alternatively, a facility may choose to revise its trial burn plan to address the reasons for the failure and then conduct an additional burn under improved design or operating conditions. EPA believes that the majority of facilities that fail trial burn condition(s) will choose this latter course of action in order to establish permit conditions that meet their needs for long-term operation.

EPA believes that there may be a misconception that permitting authorities allow facilities to run the same conditions over and over again without making any changes. The Agency would like to remove any confusion over its policy regarding performance of additional trial burns when a test condition fails. It is important first to recognize that a facility spends a considerable amount of time and resources on the trial burn, and intends to pass the first time. An informal poll of EPA Regions showed that only a dozen additional trial burns for incinerators have occurred to date.

Furthermore, EPA has clarified, in its Guidance on Trial Burn Failures (June 1994), the circumstances under which facilities would be allowed to run additional trial burns. According to this guidance, facilities may submit a request to conduct an additional trial burn to the Director. As part of this request, the facility should demonstrate that it has investigated the reasons for the failure and describe planned substantive changes to its process. A facility should not be allowed to retest under the same design and operating conditions at which it failed. The facility should demonstrate in a revised trial burn plan that the changes to its design and/or operations are sufficient to prevent failure from reoccurring. The Director reviews, and either approves or denies, the request. The Director should not approve an additional trial burn unless the facility has demonstrated satisfactorily that the changes proposed in the revised trial burn plan are likely to meet the performance standards.

As indicated in the trial burn guidance, existing EPA policy allows for facilities to conduct additional trial burns. Current regulations, on the other hand, do not specifically address permitting procedures for interim status combustion facilities for the limited number of situations when facilities would request additional burns. Today's proposed rule establishes procedures for these situations and builds upon EPA's current policy by incorporating the circumstances described in guidance into proposed regulatory language.

Under proposed § 270.74(c)(7), interim status combustion facilities may request an additional trial burn. According to the proposed section, the facility's request for an additional trial burn must contain an explanation of the reasons for the previous trial burn failure, as well as a revised trial burn plan that has substantive changes to address the reasons for the previous failure. EPA encourages facilities that pursue this option to fulfill the above requirement by expanding the preliminary explanation that they are required to provide in order to continue operating during the post-trial burn period (as discussed in the previous section). The Agency believes that these provisions, along with the requirement that the permitting agency approve trial burn plans before the facility conducts the burn, will help ensure that facilities conduct trial burns properly and the public is informed throughout the process.

EPA believes it is important to inform the public when the permitting authority anticipates an additional trial burn. Thus, in proposed § 270.74(c)(7), the rule will require the Director to inform the people on the mailing list and appropriate units of State and local government once he or she has reviewed the revised trial burn plan and has tentatively decided to approve it. This notice will provide the public with an opportunity to review the revised plan, and see the rationale for the additional burn. EPA wants the public to be aware of the reasons why the facility believes the additional run will be successful. The Director's decision to approve a

revised trial burn plan is not subject to administrative appeal.

f. Denial of permit application after the trial burn. There may be occasions when a combustion facility cannot demonstrate compliance with the performance standards through the trial burn, or has not demonstrated to the Director that an additional burn is likely to address the causes of the previous failure. In the case of permitted facilities, the Director may choose to terminate the permit. Existing regulations in § 270.43 provide the Director with the authority to terminate a permit for cause, following procedures set forth in part 124.

EPA would like to provide similarly clear authority to the Director in the case of interim status combustion facilities. Existing regulations in § 270.29 provide the Director with authority to deny a permit application, pursuant to procedures in part 124. In order to clarify the applicability of this provision to trial burn failure situations, EPA is proposing, in § 270.74(c)(8), to provide specific authority for the Director to deny a permit, pursuant to procedures in part 124, for an interim status combustion facility, based on the facility's inability to demonstrate compliance with the performance standards. It is not EPA's intent, in providing this authority, to imply that the Director would deny a permit automatically if the facility failed any of the trial burn plan conditions. Every facility, permitted and interim status alike, will have the option of requesting and proving that it can meet the requirements for an additional burn.

In keeping with EPA's goal of involving the public at key points in the permit process, EPA would like to reiterate that the current procedures for permit denial, set forth in part 124, include requirements for the permitting authority to notify to the public of intent to deny the permit application.

IV. Solicitation of Comments

EPA is soliciting comments on a number of items in today's proposed rule. The following is a list of the items on which EPA solicits comment in the preamble. Detailed discussions of each of the items can be found in the relevant sections of the preamble. For ease in referencing these sections, the items are briefly summarized below.

A. Expanded Public Participation

1. Equitable Public Participation

EPA is asking for comments, in section 4.a: Equitable Public Participation, on how the requirements proposed in § 124.30 could be implemented.

2. Environmental Justice

EPA is soliciting comments, in section 4.a.1: Agency activities dealing with environmental justice, on several items relating to environmental justice. For instance, EPA is interested in receiving comments on ways to incorporate environmental justice concerns into the RCRA public participation process. EPA is also requesting comments on the need for additional rulemaking or policy guidance for incorporating environmental justice into certain aspects of the RCRA permitting program, such as corrective action. The Agency is also interested in receiving comments on suggested methodologies and procedures for undertaking analysis of "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Finally, EPA is soliciting comments on some of the recommendations developed by the OSWER Environmental Justice task force, discussed in section 4.a.1.

3. Pre-Application Meeting—Applicability

EPA is soliciting comments on the applicability of the pre-application meeting requirements in two sections. In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether the pre-application meeting should apply to permit renewal applications. In section 5.b: Requirements for the Pre-application Meeting, EPA is requesting comment on whether the requirements should apply to all facilities or only to certain groups (e.g., incinerators, commercial facilities). EPA is also requesting comments on whether the permitting authority should attend the pre-application meeting.

4. Pre-Application Meeting—Possible Alternative

In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether a State's public participation meeting for siting a facility should be an allowable substitute for today's proposed pre-application meeting.

5. Pre-application Meeting Notice Requirements

As discussed in section 5.b.1: Providing Notice of the Pre-application Meeting, EPA would like comments on whether these expanded notice requirements should apply to other notices during the RCRA permitting process. EPA also requests comments on how to implement the alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

6. Public Notice at Permit Application—Applicability

EPA is requesting comments in section 4.c: Applicability of Public Notice at Permit Application on whether today's proposed requirements should also apply to post-closure permits.

7. Public Notice at Permit Application—Responsibility

In section 5.c: Requirement for Public Notice at Permit Application, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing the public notice at application submittal.

8. Information Repository

EPA is requesting comments on the proposed information repository requirements described in section 5.d: Requirement for an Information Repository. For example, at what time during the permitting process would it be useful to have the repository be maintained or terminated? Should the repository be limited to certain types of facilities? What specific documents would the public like to see in the repository?

B. Requirements Regarding the Trial Burn

1. Notices of Trial Burns

In section 4.c: Notices of Trial Burns, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing public notices during the trial burn stage. EPA is also requesting comments, in section 5.c.2: Interim Status Combustion Facilities, on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on a draft trial burn plan as part of the draft permit process.

C. Cost Estimates

In section VI. Regulatory Impact Analysis Pursuant to Executive Order 12866, EPA is asking for comments on the data and methodologies used to derive the cost estimates associated with this proposed rule.

EPA intends to consider all comments on these, and any additional, items before drafting a final rule.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified timeframes. However, the new federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, HSWA amended RCRA to add section 3006(g) (42 U.S.C. 6926(g)). Under section 3006(g), new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed by statute to implement those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim.

Today's proposal is promulgated pursuant to pre-HSWA authority. These provisions, therefore, would become effective as RCRA requirements in states with final authorization once the state has amended its regulations and the amended regulations are authorized by EPA. However, EPA would like to encourage States to adopt the changes proposed today expeditiously, and implement them as part of their own programs as rapidly as possible.

B. Effect on State Authorizations

The provisions of this rule are proposed under pre-HSWA authority. This section discusses the implications of the pre-HSWA authority on EPA's and the states' implementation, and the schedule for state adoption of these new requirements.

1. Pre-HSWA Provisions

a. Part 270—Hazardous Waste Permitting. The provisions of today's proposal that would affect the permitting and permit modification procedures for combustion units (BIFs and incinerators) are proposed under pre-HSWA authority. These provisions include revised §§ 270.22(a) and 270.19(d) which clarify allowable circumstances for using the "data in lieu of trial burns" in connection with permitting combustion units; proposed § 270.74, and revisions to §§ 270.62 and 270.66 for permitted units, which would add new procedures for public involvement in the trial burn planning and trial burn phases for both permitted and interim status combustion facilities, make interim status procedures more equivalent to permitted, and require interim status facilities to comply with performance standards during the post-trial burn period. In addition, the proposed amendments to the permit modification provisions of § 270.42 (to distinguish further between the shakedown and trial burn phases when modifying permitted combustion units) are also based on pre-HSWA provisions. These provisions of the proposal, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

b. Part 124—Public Participation Requirements. EPA desires to provide for, encourage and assist public participation. This proposed rule would establish procedures to promote better and more timely information sharing between the public, the state, EPA, and the facility applicant. The following is required under the part 124 regulations to comply with new public participation requirements: A pre-application meeting, a notice of application, and an information repository. However, these provisions, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

2. Procedures Applicable to Pre-HSWA Provisions

40 CFR 271.21(e) requires that states that have final authorization must modify their programs to reflect federal program changes and must subsequently submit the modifications to EPA for approval. The deadlines for state modifications are set out in § 271.21(e)(2), and depend upon the date of promulgation of final rules by EPA, announcing the program changes. For example, if a final regulation based on this proposal is promulgated by EPA before June 30, 1995, the deadline by which the states must modify their programs to adopt this regulation would be July 1, 1996 (or July 1, 1997 if a state statutory change is needed). These deadlines can be extended in certain cases (see 40 CFR 271.21(e)(3)). Once EPA approves the modifications, the state requirements become RCRA subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those proposed today. These state regulations have not been assessed against final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of state law are not considered to be authorized RCRA requirements until they are submitted to EPA and evaluated against final EPA regulations. Of course, states may continue to administer and enforce their existing standards as a matter of state law.

States that submit their official applications for final authorization less than 12 months after the effective date of final standards are not required to include standards that are at least as stringent as these standards in their application. However, states that submit final applications for final authorization 12 months or more after the effective date of the final standards must include standards that are at least as stringent as these standards in their applications. 40 CFR 271.3 sets forth the requirements that states must meet when submitting final authorization applications. Because the proposed public participation requirements in § 270.74 represent a significant upgrade to the combustion unit permitting process, EPA strongly encourages States that have not yet adopted the BIF rule (56 FR 7134, February 21, 1991) to adopt these new public participation procedures concurrently with their BIF rules, rather than deferring their adoption to the much later deadline that would apply under the Cluster Rule to this new regulation. It should be noted that in situations where EPA retains permitting

authority for BIFs (because the State has not yet received authorization for BIFs), EPA may implement both the permitting and public involvement procedures described in today's proposed rule. In this joint permitting situation, EPA would be the responsible Agency for the BIF permitting requirements in unauthorized States that are not authorized to issue BIF permits.

EPA believes that the overall effect of this proposed regulation would increase the stringency of the RCRA permitting processes. Therefore, all authorized states will be obligated to modify their programs to adopt these requirements when they are finalized by EPA, unless their existing state programs and laws are deemed by EPA to be equivalent in effect. For those states which are obligated to modify their programs to adopt these requirements when they are finalized by EPA, § 271.21(e) deadlines for state modifications will apply accordingly.

In developing today's proposed regulations, EPA was sensitive to impacts on existing State programs. The proposed requirements may be viewed as performance objectives the Agency wants States to meet. It is not EPA's intent to restrict States from using similar activities that accomplish the same objectives. Therefore, EPA will allow latitude and room for interpretation when reviewing state modifications for adopting these regulations.

VI. Regulatory Impact Analysis pursuant to Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined this is a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements regarding expanded public participation before and during permit application would result in an incremental national annual cost of $130,000 to $380,000.

In addition, the annualized incremental national cost of the permitting requirements in today's proposed rule is estimated to be between $0 to $520,000. EPA expects that much of the effect of the permitting provisions in today's proposed rule will be to clarify and codify current practice.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements of today's proposed rule would result in an incremental national annual cost of $130,000 to $900,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's proposed rule in a report entitled "Economic Impact Analysis for the Proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures Rule."

EPA requests comments on the data and methodologies used to derive the estimates described below and in the background document.

A. Cost Analysis

This section summarizes estimated costs and potential impacts of two aspects of today's proposed rule: (1) Expansion of opportunities for public involvement in the permitting process, and (2) modification of combustion unit permitting requirements. These two pieces of the proposed rule affect a different universe of facilities at different stages in the permitting process and, thus, are presented separately.

1. Expanded Public Involvement Opportunities

Most of the requirements of the expanded public involvement portion of today's proposed rule apply only to new hazardous waste treatment, storage, and disposal permit applications. With the exception of the information repository requirement (see below), the expanded public involvement requirements do not apply to post-closure permits and permit modifications.

EPA estimates that, over the next ten years, the bulk of new permit applications will be submitted by the 159 interim-status boilers and industrial furnaces (BIFs). In addition, based on information provided by the Regional permit writers, EPA estimates that an additional 53 to 127 new treatment, storage, and disposal facilities (for a total of 212 to 286 facilities) will submit permit applications over the next ten years.

Today's proposed rule includes several requirements that would result in direct costs to facilities submitting new permit applications. The analysis estimates the costs to all affected facilities of (1) Preparing a public notice announcing the intention to submit a permit application and to hold a public meeting; (2) disseminating the public notice in local newspapers and over the radio; and (3) holding a public meeting and preparing a transcript.

In addition, for communities with a non-English speaking population, the rule will require the facility to "make all reasonable efforts to communicate with the community in ways that reach all segments." Based on conversations with RCRA and Superfund Regional community relations specialists and on data about existing RCRA facilities, this analysis assumes that between 5%–30% of the facilities (11 to 86 facilities over the next ten years) will fulfill this requirement by publishing multi-lingual notices and providing an interpreter at the public meeting.

Finally, the rule will give the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process, including post-closure permits, permit renewals, and permit modifications. Thus in addition to the interim status BIFs and the new facilities mentioned above, the repository requirement can apply, at the discretion of the Director, to the approximately 4,100 treatment, storage, and disposal facilities that EPA expects will undergo permit renewals, modifications, or closure over the next ten years. EPA estimates that 15–20% of the estimated 212 to 286 facilities submitting a new Part B application, and 1% of the 4,100 already-permitted facilities (73 to 98 facilities total) would be affected over the next ten years by the repository requirement in today's proposed rule.

The total cost per facility of the above requirements is approximately $5,000 to

$14,000. Annualized over a ten-year period, using a 7% discount rate, the resulting national annual cost of the expanded public involvement requirements is estimated to be between $130,000 to $380,000.

2. Modification of the Permitting Process

a. Direct costs. Today's proposed rule includes two new permitting requirements that have direct cost implications for the regulated universe: (1) Changing the "data in lieu of" requirements, and (2) specifying the events that follow a trial burn failure.

Currently, interim status combustion facilities have the option of submitting "data in lieu of" a trial burn for a unit that is "sufficiently similar" to an already-permitted unit. Today's proposed rule proposes changing the requirements for "data in lieu of" by requiring the units to be "virtually identical" and to be located at the same facility.

Based on information from trial burn contractors, preparing a trial burn plan and conducting a trial burn costs about $110,000 to $550,000 per facility. Submitting "data in lieu of" a trial burn is assumed to cost approximately the same as preparing a trial burn plan, or $10,000 to $50,000. The net incremental cost of denying the "data in lieu of" option would be $100,000 to $500,000 per affected facility.

EPA estimates that between zero and eight percent (0–13 facilities total) of the interim-status BIFs could incur a cost of doing a trial burn due to this proposed rule. The resulting annual national cost is $0 to $520,000.

The low end of the affected facility universe is "zero" because, although submission of "data in lieu of" a trial burn is an option under current regulations for a facility with "sufficiently similar" units, it appears that facilities almost never exercise this option. EPA guidance on trial burns states that "although it is possible to satisfy this requirement by submitting information showing that a trial burn is not required, this is a rare occurrence * * *."[2] Neither of the trial burn contractors that were contacted was aware of a successful "data in lieu of" application. Regional permit writers knew of a few permits that were granted based on the "data in lieu of" provision, but in those cases the units were determined to be identical and, therefore, would still qualify under today's proposal. Thus it is likely that the main effect of changing the "data in lieu of" provision will be to clarify already existing practices, and to reflect more realistic situations and how EPA currently interprets this provision.

The second permitting requirement that may result in a direct cost to the regulated community is the delineation of the process following a trial burn failure. Today's proposed rule proposes that, following a trial burn failure, (1) The combustion facility must immediately restrict operation for those conditions that failed the trial burn, and (2) the combustion facility must either revise the permit application to reflect the new conditions (estimated cost $5,100), or revise the trial burn plan and rerun the trial burn (estimated cost $110,000 to $550,000).

EPA estimates that 4% of interim status combustion units (six facilities over the next twenty years) will fail a trial burn for one or more conditions. Of these, 17% (one facility) is expected to simply revise the permit application and 83% (five facilities) are expected to revise the trial burn plan and rerun the trial burn. Annualized over a ten year period, discounted at 7%, the resulting annualized national total cost of facility actions that follow a trial burn failure is $70,000 to $340,000.

Although the above costs can be attributed to today's proposed rule, EPA does not expect there to be any true incremental costs. Currently, if an interim status facility fails a trial burn, the permitting authority can deny the permit. In addition, based on conversations with EPA Regional permit writers, no permit writer would grant a permit to a facility that failed the trial burn unless the facility re-ran (and passed) the trial burn or revised the permit conditions. Thus, the incremental cost of this proposed requirement, when current practices are taken into account, is $0. The main effect of the delineation of the process that follows trial burn failures would be to clarify current permitting requirements.

In summary, the potential annualized total national cost for the permitting section of today's proposed rule is estimated to be $70,000 to $860,000. The annualized incremental cost, when current practices are taken into account, is estimated to be between $0 to $520,000. EPA expects that the main effect of the permitting provisions of today's proposed rule will be to clarify and codify current practice.

b. Other effects. In addition to the costs estimated above, the requirement that interim status combustion facilities be subject to the performance standards of § 264.342 (for incinerators) or § 266.104 through § 266.107 (for BIFs) upon completion of trial burn has the potential to impose costs due to the restricted operating conditions.

However, despite the proposed restriction following trial burn failure, operations at the affected units are not expected to cease entirely, because the proposed restriction on operations pertains only to the condition(s) that fail to meet the specifications in the trial burn plan. The unit can continue operations under a modified design and/or operating conditions that are sufficient to allow the unit to function within the performance standards. In addition, the restriction lasts only until the trial burn plan is revised and a new trial burn occurs or the permit application is modified. Therefore, EPA does not expect this provision to significantly disrupt facility operation or impose significant additional costs.

B. Summary of Benefits

The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's proposed rule produces environmental benefits that result from a more efficient permitting process. Below is an explanation of how each of the provisions of today's rule provides benefits.

1. Expanded Public Involvement Opportunities

The main benefit of the expanded public participation requirements of today's rule is to provide more opportunities for the public to become involved early in permitting decisions regarding hazardous waste storage, treatment, and disposal facilities that may ultimately affect their communities. EPA believes these requirements will allow applicants and permitting authorities the opportunity to address public concern in making decisions about the facility and the proposed permit.

Providing the public with an expanded role in the permit process, by promoting community participation and input at all decision-making levels, also will help to foster continued community involvement after sites become permitted.

In addition, expanding public involvement opportunities should streamline the permitting process, since public issues will be raised and addressed earlier in the process. Currently, the public does not formally get involved in the permitting process until the draft permit stage. This stage occurs after the permitting agency and

[2] Guidance on Setting Permit Conditions and Reporting Trial Burn Results. US EPA January 1989.

the permit applicant have discussed crucial parts of the Part B application; thus, the public feels that most major decisions on the permit have already been made at this point.

2. Modification of the Permitting Process

One benefit of the permitting provisions of today's rule is to clarify current practices and, therefore, facilitate the permitting process by making it easier to understand for the public and the regulated community.

For example, today's proposal moves § 270.62(d) and § 270.66(g), which address interim status requirements, to proposed § 270.74, where the majority of the interim status provisions are contained. The wording is essentially the same, clarifying when the facility must submit the trial burn plan and emphasizing that the permitting authority must approve the trial burn plan before the facility may conduct the trial burn. The new language structure presents the requirements chronologically and makes the regulation easier to understand.

EPA is also stating in § 270.74(c)(1) that interim status combustion facilities seeking permits must receive approval of the trial burn plan by the Director before conducting the trial burn. EPA believes that making the requirements more explicit will ensure that trial burn plans reflect EPA policy and guidance, and that the burns will be adequate to set permit operating conditions. As discussed in the cost analysis section, EPA is also proposing a revision of the provision for submitting data in lieu of a trial burn (§ 270.19 for incinerators and § 270.22 for BIFs) to reflect current practices.

By specifying that a unit must be "virtually identical" to, and at the same facility as, a permitted unit, instead of "sufficiently similar", today's rule will remove any confusion surrounding the interpretation of the "data in lieu of" option and will reflect EPA's current interpretation of this provision.

Another aspect of the permitting process that may cause confusion is the fact that, although existing EPA policy allows the facility to conduct additional trial burns, current regulations do not specifically address permitting procedures following an interim status facility trial burn failure. Today's proposed rule, by clarifying existing EPA policy, will help state what actions follow a trial burn failure.

Finally, today's proposed rule describes in more detail the phases of both shakedown and the trial burn permit modifications listed under section L.7 of Appendix I, and clarifies how a facility may implement and utilize section 270.42(d) of the modification procedures. This revision will simplify a facility's compliance with the modification process by making it easier for a facility to select the appropriate classification for the modification activity.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

In developing the proposed regulations for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. Therefore, the proposed regulations describe the minimum efforts necessary to fulfill the public involvement requirements. Additional examples of activities facilities may choose to conduct are provided in the preamble, rather than incorporated into the regulatory language. EPA's intent in doing so is to provide flexibility for a facility to determine how elaborate it wishes to be in conducting public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource intensive for a facility or for the local community. EPA has addressed this concern by providing discretion to the Director to determine whether to require a repository, rather than requiring it for all facilities.

In regards to the burden placed on facilities that burn small quantities of hazardous waste, EPA has already provided an exemption under section 3004(q)(2)(B) of RCRA. The Agency carefully evaluated the risks posed by small quantity burning and concluded that a conditional exemption for small quantity burners should be allowed where hazardous waste combustion poses an insignificant risk. This small quantity burner exemption would therefore reduce the burden placed on small entities from the revised permitting requirements for hazardous waste combustors.

The following sub-sections summarize the potential impacts on small entities of three aspects of today's proposed rule: expanded public participation requirements, revised requirements for "data in lieu of" a trial burn, and requirements following a trial burn failure. In summary, EPA has determined that there are no significant impacts on small entities from the requirements of this proposed rule.

1. Small Entity Impacts of Expanded Public Participation Requirements

The universe of facilities affected by the public participation requirements include all facilities submitting a new part B application. In the case of the repository requirement, facilities undergoing permit modification or closure may also be affected.

Determination of which facilities that submit new part B applications might be small entities is somewhat speculative. Assuming future RCRA facilities will resemble past facilities, approximately 12% of the estimated 53 to 127 new hazardous waste treatment, storage, and disposal facilities may be "small entities."[3] In addition, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities," based on current size thresholds established by the U.S. Small Business Association.[4,5]

As mentioned in the cost analysis section, the highest total cost of the public participation requirements is estimated to be $14,000 per facility. This cost includes setting up an information repository, translating public notices, and interpreting public meetings. Annualized over ten years at a discount rate of 7%, the cost for a facility, as the high end of the cost range, would be $1,900 per year.

This $1,900 per year may have a significant impact on a small entity if it is greater than five percent of the total cost of production. Thus a facility whose total cost of production is less than $37,000 may be significantly impacted. It is highly unlikely that the cost of production would be this low for a RCRA hazardous waste facility. Total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies.[6]

[3] Hazardous Waste TSDF—Regulatory Impact Analysis for Proposed RCRA Air Emission Standards, Final Review Draft, USEPA, Office of Air and Radiation, August 1989. "Small entity" was defined as a company whose uniform annual sales cutoff is equal to $3.5 million.

[4] 13 CFR part 121.

[5] Employment, sales, industry category, and parent company information was obtained from on-line searches of Dun & Bradstreet and the American Business Directory. In addition to the fourteen BIFs that were identified as potentially small entities, another four did not have enough information to make a determination.

[6] Ibid.

Costs of production would presumably be in the same order of magnitude. Thus EPA has determined that there are no significant impacts on small entities from this provision of the proposed rule and that alternative regulatory approaches are not necessary.

2. Small Entity Impacts of Revised Requirements for "Data in Lieu of" a Trial Burn

The universe of facilities potentially affected by the revised requirements for "data in lieu of" a trial burn include interim-status BIFs that would have used the "data in lieu of" exemption, but because of the revised requirements of the proposed rule, would now not be allowed to do so. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities."

As mentioned in the cost analysis section, the revised requirements for "data in lieu of" a trial burn have a potential direct incremental cost of $0 to $500,000 per affected facility, or an annualized cost of $0 to $47,000 per facility (over ten years at 7% discount rate, assuming costs occur in year one). The high end of the cost range would be caused by trial burn costs that are imposed due to tightening of the "data in lieu of" requirement. Because total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies,[7] the costs of the "data in lieu of" requirement are less than 5% of total sales for any one facility and therefore not likely to significantly impact small entities.

Furthermore, the "data in lieu of" requirement is not a new requirement, but simply a codification of current policy. Currently, this requirement can only be applied at facilities with multiple units. Such facilities are not likely to be small entities; therefore a tightening of the "data in lieu of" requirement would not affect small entities. Thus EPA does not expect the revised requirements for "data in lieu of" a trial burn to impact small entities.

3. Small Entity Impacts of Requirements Following a Trial Burn Failure

The universe of facilities potentially affected by the requirements following a trial burn failure include interim-status BIFs that fail their trial burn for one or more condition. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities." As explained in the cost analysis section, EPA does not expect there to be any major incremental costs to those facilities that fail a trial burn and, therefore, does not expect the proposed rule requirements to have any significant impacts on small entities.

D. Enhancing the Intergovernmental Partnership

Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies to establish meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste. In developing this proposed rule, therefore, EPA has consulted with State officials. EPA had five states (representing various parts of the country, e.g., east, south, center, and west) participate in the workgroup process for this proposed rule. These states reviewed and provided feedback on the draft proposal over a period of eight months. In addition, these states participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the draft proposal.

EPA contacted additional states in an effort to receive their specific feedback on general permitting and public involvement techniques. Additionally, EPA solicited state input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which 16 state representatives participated. The state participants provided numerous helpful suggestions and ideas.

In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. Also, State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in both vehicles, state representatives made valuable contributions to the regulatory development process.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1688.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden varying from 203.45 to 1,230.50 hours per response, with an average of 716.98 hours per response, and to require 34.10 hours per recordkeeper over the three year period covered by the ICR. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Dated: May 20, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 7401 *et seq.*

[7] Ibid.

2. Subpart B is added to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.
124.30 Equitable Public Participation
124.31 Public participation requirements at pre-application.
124.32 Public notice requirements at application stage
124.33 Information repository.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.30 Equitable public participation.

The applicant and the Director shall make all reasonable efforts when conducting public information activities, such as public briefings, meetings, hearings, and dissemination of notices and fact sheets, to ensure that all segments of the population have an equal opportunity to participate in the permitting process. Reasonable efforts include disseminating multilingual public notices and fact sheets, and providing an interpreter at public meetings and hearings, where the affected community contains a significant non-English speaking population.

§ 124.31 Public participation requirements at pre-application.

(a) Prior to the initial submission of a Part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility, the location of the facility, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures.

(b) A stenographic or electronic record shall be made of the meeting, along with a list of attendees and their addresses. The record, list of attendees, and copies of any written comments or materials submitted at the meeting, shall be submitted as part of the permit application.

(c) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting in a manner that is likely to reach all affected members of the community. The applicant must provide documentation of this notice in the permit application.

(1) Public notice shall be given in the following manner:

(i) The notice shall be published in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility, and in each adjacent county or jurisdiction, if applicable. In situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility. The notice must be published as a display advertisement. The advertisement shall appear in a place within the newspaper calculated to give the general public effective notice; it must be of sufficient size to be seen easily by the reader.

(ii) The applicant must post a notice on a clearly marked sign on the proposed or existing facility property. The sign should be large enough so that the wording is readable from the facility boundary. It is not necessary to display a map on the required posted sign on the facility property.

(iii) The notice must be broadcast on at least one local radio station.

(2) The notices required under paragraph (c)(1) of this section must include:

(i) The date, time, and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including a map (e.g., a sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice.

(iv) A statement that encourages people who need special access (e.g., disabled) to participate in the meeting to provide at least a 72-hour advance notice of their needs to the facility.

(d) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, permit renewals under § 270.51 of this chapter, or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

§ 124.32 Public notice requirements at application stage.

(a) Notification at application submittal: (1) The Director shall provide public notice as cited in § 124.10(c)(1)(ix), that a Part B permit application has been submitted to the Agency, and is available for review. The requirements of this section apply to permit renewals under § 270.51 of this chapter as well as to original applications.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which comments and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) Location where copies of the permit application and any supporting documents can be viewed and copied;

(v) Brief description of the facility and proposed operations, including a map (i.e., sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice; and

(vi) The date the application was submitted.

(b) Concurrent with the notice required under § 124.32(a) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the permitted facility or at the permitting agency's office. For facilities establishing an information repository pursuant to proposed §§ 124.33 or 270.30(l)(12) of this chapter, the applicant shall place a copy of the permit application or modification request, and any supporting documents in the information repository.

(c) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, and/or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

§ 124.33 Information repository.

(a) At any time during the application process for a RCRA permit, the Director may require the applicant to establish and maintain an information repository The purpose of this provision is to make accessible to interested persons documents, reports and other public information developed pursuant to activities required under 40 CFR parts 124, 264, and 270. (See § 270.30(l)(12) of this chapter for similar provisions relating to the information repository during the life of a permit.)

(b) The information repository shall contain all documents, reports, data, and other information deemed sufficient by the Director for public understanding

of the plans, activities, and operations of any hazardous waste facility that is operating or seeking a permit.

(c) The information repository shall be located and maintained at a location chosen by the facility that is within reasonable distance of the facility, and within a structure with suitable public access, such as a county library, courthouse, or local government building. However, if the Director determines the location unsuitable, the Director may specify a more appropriate location. The repository shall be open to the public during reasonable hours, or accessible by appointment. The information repository shall be located to provide reasonable access to a photocopy machine or alternative means for people to obtain copies of documents at reasonable cost.

(d) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(e) Information regarding opportunities and procedures for public involvement, including the opportunity to be put on the facility mailing list, shall be made available at the repository.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director, unless existing State regulations require the State to maintain the information repository.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by adding, in alphabetical order, a definition for "Combustion unit," and by revising the definition for "Facility mailing list" to read as follows:

§ 270.2 Definitions.

* * * * *

Combustion unit means any unit that meets the definition of an incinerator, a boiler, or an industrial furnace in § 260.10 of this chapter.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA or the State in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.19 is amended by revising paragraphs (b) and (d) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(b) Submit a trial burn plan with the initial part B application including all required determinations, in accordance with §§ 270.62 or 270.74; or

* * * * *

(d) The Director shall approve a permit application for an incinerator without a trial burn if he finds that:

(1) The wastes are sufficiently similar;

(2) The incinerator units are virtually identical and are located at the same facility; and

(3) The data from other trial burns are adequate to specify (under § 264.345 of. this chapter) operating conditions that will ensure that the performance standards in § 264.343 of this chapter will be met by the incinerator.

* * * * *

4. Section 270.22 is amended by revising paragraph (a)(6) to read as follows:

§ 270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) * * *

(6) *Data in lieu of a trial burn.* The owner or operator may seek a waiver from the trial burn requirements to demonstrate conformance with §§ 266.104 through 266.107 of this chapter and § 270.66 by providing the information required by § 270.66 from previous compliance testing of the device in conformance with § 266.103 of this chapter, or from compliance testing or trial or operational burns of boilers or industrial furnaces with a virtually identical design at the same facility burning similar hazardous wastes under virtually identical conditions. If data from a virtually identical device is used to support a trial burn waiver request, the design and operating information required by § 270.66 must be provided for both the virtually identical device and the device to which the data are to be applied, and a comparison of the design and operating information must be provided. The Director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are virtually identical in design and at the same facility, the operating conditions are virtually identical, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under § 266.102 of this chapter) operating conditions that will ensure conformance with § 266.102(c) of this chapter. In addition, the following information shall be submitted:

* * * * *

5. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish an information repository for a permit if the Director determines that there is significant public interest in the permitted facility. The information repository will be governed by the provisions in § 124.33(b) through (f) of this chapter.

* * * * *

6. Section 270.42 is amended by revising paragraph (d)(1) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(d) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit to the Agency a request for a determination by the Director on a Class 1, 2, or 3 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

* * * * *

7. Section 270.42, Appendix I is amended by redesignating item L.8. as L.9, revising item L.7, and adding a new item L.8 and note at the end of Appendix I to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
. . . . .	
L. Incinerators, Boilers, and Industrial Furnaces:	

Modification	Class
* * * * * * *	
7. Shakedown:	
a. Modification of permit conditions applicable during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
b. Authorization of an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
8. Trial Burn:	
a. Changes in the approved trial burn plan for conducting an initial trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
b. Changes in the approved trial burn plan for conducting an initial trial burn, if the change is not minor	2
c. Changes in the approved trial burn plan to conduct additional trial burn testing under revised conditions if the unit has not met one or more conditions of a previous trial burn	2
d. Modification of permit conditions applicable during the post-trial burn period, with prior approval of the Director	[1] 1
e. Changes in the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
* * * * * * *	

[1] Class 1 modification requiring prior Agency approval.

Note: Permittees should use the procedures in 270.42(d) if a proposed modification is not listed in this Appendix.

8. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority.

* * * * *

9. In § 270.62, paragraph (d) is removed.

10. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority.

* * * * *

11. In § 270.66, paragraph (g) is removed.

12. Section 270.74 is added to read as follows:

§ 270.74 Trial burn requirements for interim status combustion units.

(a) Submission of the trial burn plan for interim status incinerators. For the purpose of determining feasibility of compliance with the performance standards of § 264.343 and establishing adequate operating conditions under § 264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan with Part B of the permit application in accordance with § 270.19(b) and 270.62(b)(2).

(1) Applicants submitting other information as specified in 270.19(c) are exempt from the requirement to conduct a trial burn if the Director approves the permit application in accordance with the criteria in § 270.19(d).

(2) Applicants submitting information under § 270.19(a) are exempt from compliance with §§ 264.343 and 264.345 of this chapter and, therefore, are exempt from the requirement to conduct a trial burn.

(b) Submission of the trial burn plan for interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of §§ 266.104 through 266.107 of this chapter and establishing adequate operating conditions under § 266.102 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must prepare and submit a trial burn plan with Part B of the permit application in accordance with §§ 270.22(a) and 270.66(c) or submit other information in accordance with § 270.22(a)(6).

(c) At combustion facilities—approval of the trial burn plan and conducting the trial burn. (1) The applicant must receive approval for the trial burn plan by the Director before performing a trial burn.

(2) The Director shall review and make a determination on the trial burn plan in accordance with §§ 270.62(b)(3) through (b)(5) for incinerators, or § 270.66(d)(2) for boilers and industrial furnaces.

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and

local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft trial burn plan and has tentatively decided to approve it.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the draft trial burn plan and any supporting documents can be viewed and copied; and

(D) A schedule of required activities prior to permit issuance, including when the permitting authority is expecting to give its approval of the plan, and the time periods during which the trial burn would be conducted.

(4) When a trial burn plan is approved, the Director will specify a time period prior to permit issuance during which the trial burn must be conducted.

(5) The applicant shall perform a trial burn in accordance with the approved trial burn plan, and must make the required determinations, submissions, and certifications in accordance with §§ 270.62(b)(6) through (b)(9) for incinerators, or §§ 270.66(d)(3) through (d)(5), and 270.66(f) for boilers and industrial furnaces. Trial burn results must be submitted prior to issuance of a draft permit.

(6) Upon completion of the trial burn, combustion units must comply with the performance standards of § 264.343 of this chapter (for incinerators), or §§ 266.104 through 266.107 of this chapter (for BIFs), along with all other applicable interim status standards. Compliance shall be demonstrated and determined based on the results of the trial burn, as follows. The owner or operator may only operate the combustion unit under conditions that passed and were demonstrated to meet the performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions during the post-trial burn period. If any results of a trial burn for a combustion unit show non-compliance with any set of performance standards, the owner or operator must immediately cease operating under the condition(s) that resulted in non-compliance, and notify the Director. In order to continue operating when results of the trial burn show non-compliance with any performance standards under any set of conditions, the owner or operator must submit to the Director, with the trial burn results, a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. After reviewing the trial burn data and the preliminary demonstration submitted by the owner or operator, the Director may further restrict operating conditions as necessary to assure that the unit is operated within the performance standards.

(7) If the trial burn results indicate that any performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, have not been met, the facility may submit a request to conduct an additional trial burn.

(i) The request to conduct an additional trial burn must include:

(A) An explanation of the reasons for the previous trial burn failure; and

(B) A revised trial burn plan submitted under paragraph (a) or (b) of this section which contains substantive changes to address the reasons for the previous trial burn failure.

(ii) The revised trial burn plan must be approved by the Director according to the requirements of paragraphs (c)(1) through (c)(4) of this section. The Director may approve the request to conduct an additional trial burn only if the requirements of this section have been satisfactorily met.

(iii) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft revised trial burn plan and has tentatively decided to approve it.

(iv) This notice must be given within a reasonable time period, and in accordance with § 270.74(c)(3)(A) through (D).

(8) If the trial burn results indicate that compliance with the performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, was not achieved, and thus, operating conditions cannot be developed under § 264.345 of this chapter for incinerators, or § 266.103 of this chapter for boilers and industrial furnaces, the Director may, pursuant to the procedures in Part 124 of this chapter, deny the permit application for the combustion unit.

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Thursday
June 2, 1994

Part IV

Department of Agriculture

Forest Service

Recreation Residence Authorizations; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB06

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice, adoption of final policy.

SUMMARY: The Forest Service is adopting revised policies and procedures for administering special use permits that authorize privately owned recreation residences on National Forest System lands. This action is in response to an administrative appeal decision by the Assistant Secretary of Agriculture for Natural Resources and Environment that found that certain portions of the policy adopted on August 16, 1988, exceeded agency authority. The decision directed that those portions of the policy be stayed from implementation pending reformulation and publication of a revised policy in the **Federal Register**. In addition to adopting new provisions affected by the appeal decision, this final policy also conforms administrative provisions to revisions in the Secretary of Agriculture's Administrative Appeal regulations governing authorizations for occupancy and use of National Forest System lands, adopted after the original recreation residence policy. This final policy also clarifies the policy for determination of annual rental fees. The intended effect of this action is to administer recreation residence authorizations consistent with statutory authority.

EFFECTIVE DATE: This policy is effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to J. Kenneth Myers, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

SUPPLEMENTARY INFORMATION: On August 16, 1988, the Forest Service adopted a final policy and procedures for administering special use permits that authorize privately-owned recreation residences on national Forest System lands (53 FR 30924). The policy established a new procedure for calculating annual fees, gave direction on tenure and renewability of the permits, and described procedures to be followed when the recreation residence lot was needed for a higher public purpose

This policy was appealed to the Secretary of Agriculture on September 15, 1988. The appellants alleged that the process by which this policy was developed was flawed because the policy exceeded statutory limitations on recreation residence use of the National Forests, and that the appellants and the public were adversely affected by the policy

In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the policy to the Forest Service for restudy and reformulation and stayed the implementation of certain provisions of the 1988 policy as follows: (1) Those nonrenewal provisions relating to or requiring a showing of higher public purpose where the lands occupied were deemed needed for other than recreation residences; (2) those provisions requiring automatic permit renewal 10 years prior to expiration unless nonrenewal had been established; (3) those provisions requiring the offering of "in-lieu" lots to permittees who had received notice of nonrenewal or termination; and (4) those provisions weighted against consideration of commercial uses for lots when nonrenewal of the recreation use was contemplated. Further, the decision expressed concern about other provisions of the policy, such as fee determination procedures. In addition, the Assistant Secretary required that the remaining features of the final policy be designated as interim policy pending its reformulation following all applicable process requirements.

The policy adopted August 16, 1988, was issued as direction to Forest Service personnel through amendments and interim directives to Forest Service Manual (FSM) chapters 2340 and 2720 and Forest Service Handbook (FSH) 2709.11—Special Uses Handbook. On June 1, 1989, at 54 FR 23499, the Forest Service gave notice that the direction in FSM 2340 and 2720 was to be revised, that the remaining portions of the policy were designated as interim policy in compliance with the Assistant Secretary's decision, and removed those provisions stayed by the Assistant Secretary.

On September 20, 1989, in response to the Assistant Secretary's decision, the Forest Service gave notice that it was seeking comments on an Advance Notice of Proposed Policy (54 FR 38700). A 60-day comment period was provided which was extended an additional 60 days, expiring on January 19, 1990. In this notice, the agency offered alternative approaches to those portions of the policy stayed by the Assistant Secretary's decision and asked for public advice and comment on those provisions and on the options that the agency identified to replace the current policy provisions.

The public comment received on the September 20, 1989, notice was considered in the development of a proposed reformulated policy published on October 10, 1991 (56 FR 51260). A 90-day comment period was provided for this notice which was extended an additional 60 days to March 9, 1992. This proposed policy also provided appropriate clarifying and explanatory material for those parts of the 1988 policy shown as areas of concern in the Assistant Secretary's decision.

Analysis and Response to Public Comments

The Forest Service received 7,793 comments on the October 10, 1991, notice of proposed policy. The analysis of the public comments was accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. Information was tabulated electronically. The number and percentage of responses by category of respondents (as identified by the respondent) is as follows:

Respondent type	Number	Percentage
Permittee	4,656	60
Friend or Family of Permittee	996	12
Permittee Association	47	1
Other Organization	3	(1)
Interested Party, Not a Permittee	2,084	26
Forest Service Personnel	7	(1)
Total	7,793	100

[1] Less than 1 percent.

Comments were received from 45 States, Puerto Rico and the District of Columbia. Over 50 percent of the responses came from California which contains about 40 percent of all recreation residences. There were 312 comments received after the closing date of the notice and not considered in the analysis of comments.

Respondents comments were sorted according to the proposed policy provisions identified in the comment. They were further identified as: (1) Agreeing with the provision, (2) agreeing with the provision but with a contingency (comment), (3) disagreeing with the provision, and (4) disagreeing with the provision but with a contingency.

Of the 7,793 responses received, 6,264 (80 percent) were in the form of

questionnaires developed and distributed by 2 national permittee associations. The questionnaires presented several general statements describing a premise or belief of what the content of the revised policy should be to which the respondent could either agree or disagree. For example, question 1 of the National Forest Homeowners questionnaire stated "I strongly support the policy provision that says recreation residences are a valid and important recreation use, and that it is Forest Service policy to continue them. Please leave this provision unchanged." The fourth question of the National Inholders Association questionnaire stated "Removal of recreation residences will cause emotional pain and disruption for forest permittees and their families. It will cause waste of resources. For that reason, the proposed policy of allowing removal of existing recreation residences where there is no higher use (FSM 2721.23e) is arbitrary and wasteful." The questionnaire responses were analyzed and the general views of the respondents considered during preparation of this final revised policy. These views were helpful in identifying issues of concern to permittees.

Narrative comments were attached to 704 questionnaires. In addition, 1,529 letters containing comments on specific provisions of the proposed policy were received. The total of 2,233 narrative responses, several of which provided very detailed analysis and recommendations on policy provisions, provided the most useful information in preparing the final revised policy and form the basis for the following comment analysis.

In addition to providing the questionnaire response forms to their members, the permittee associations provided narrative responses to the proposed policy. These were generally detailed analysis of the policy with the associations' recommendations for revision and improvement.

A summary of the general comments received and the agency's response to them is presented first, followed by a summary of the specific comments received and the agency's response. Specific comments are organized in the same format as found in the supplementary information to the proposed policy notice, that is, the same 7 topic headings representing the major issues addressed in the proposed policy are used. The comment analysis concludes with a discussion of the matters of concern in the Assistant Secretary's decision and the agency's response.

General Comments

Over half of the 2,233 respondents provided general comments on recreation residence use which were not directed at specific provisions of the policy. Many respondents affirmed their desire to keep their cabins, at the same location, at reasonable cost, and without continuous fear of nonrenewal of their permits. These respondents felt the agency, through the proposed policy, was abandoning support for the recreation residence program, was biased against permit holders, and was seeking to remove this use from National Forest System lands. Some respondents, however, felt the agency was biased in favor of permit holders.

Many respondents offered eloquent testimony to the significance of the cabin to their family, citing emotional ties to the site that span several generations. Others emphasized the importance of the recreation residence use to the National Forest, describing how the cabins are used by a large segment of the public for recreation, generate income to the Treasury, and contribute to the stewardship of the National Forests.

One permittee association advocated expansion of existing recreation residence tracts and establishment of new tracts. This view was based on the belief that the agency was in violation of the Civil Rights Act of 1964 by failing to make recreation residence lots available to persons of minority races, or of diverse religious, political, and sexual beliefs. On the other hand, several respondents, favored no expansion to phasing out of all recreation residence tracts.

Many respondents objected to the appeal of the August 10, 1988, policy and 270 suggested that the policy be restored in its entirety. Often, these respondents stated that the proposed policy was biased and discriminatory against cabin owners and was overly responsive to the views of those who opposed recreation residence use. A smaller number felt the proposed policy was an improvement over the 1988 policy, but that there were several flaws in the 1988 policy not addressed in the proposal, particularly that the bias in favor of permit holders, as identified in the appeal decision, had not been corrected. Eleven respondents offering general comments generally agreed with the proposed policy, that it responded to the appeal decision, was constructive and a step in the right direction.

The Forest Service recognizes that there is a divergency of opinion on recreation residence use on the National Forests. It is sympathetic to those who have enjoyed the privilege of the use for many years and who want to continue the privilege. Further, the contributions these holders make to the management and protection of the National Forests is acknowledged.

The agency also recognizes that increasing demands are being placed on the National Forests to meet a wider array of public uses. Significant new public laws have been enacted since the act authorizing privately owned recreation residences on the National Forests was enacted in 1915. These laws, particularly the National Environmental Policy Act and the National Forest Management Act of 1976, directly impact the way the agency manages public and private uses of the National Forests. Equally significant, public perceptions of how the National Forests should be managed have changed in the 75 years the recreation residence program has been in existence.

The agency, by policy adopted over 25 years ago, stopped the establishment of new recreation residence tracts. Subsequently, it stopped issuing new permits for vacant lots in already established tracts. This has fixed the number of recreation residences in existence to a current 15,600. This action was taken in response to an increasing public demand for recreation use on the National Forests in the 1960's. The rationale supporting that policy decision still applies. The agency, while recognizing the views of those respondents who seek to create new recreation residence opportunities, believes that such action would not be in the public interest. It does not propose to create tracts nor offer new permits for recreation residence use. Recreation residences are bought and sold in the private real estate market, and, as such, are available to all individuals under the laws of the States and local governments in which they are located.

The Forest Service, in responding to the administrative appeal decision, seeks a permit review and issuance process that does not show bias in favor of the recreation residence use, nor an intent by policy to remove the permitted use.

Readers are reminded that whether recreation residence use should continue to be permitted on National Forest System lands is not the issue addressed in this final policy. The Assistant Secretary's appeal decision did not challenge the appropriateness or continuation of the use. Rather, it focussed on legal flaws identified in the 1988 policy and in the process by which that policy was adopted. This final

policy responds solely to the specific provisions in the appeal decision. The agency has not revised, redirected, or otherwise changed the national guidance stated in the 1988 policy and which was not debated in the appeal decision.

Several respondents offered editing suggestions on the proposed policy. For example, the words "lot" and "site" were used interchangeably in describing the holder's permitted area. The agency agrees that use of a single term improves clarity and has used the word "lot" throughout the final policy. Also, the words "permittee" and "holder" were both used to identify the party holding the permit for the recreation residence lot. Holder is the correct term and is used throughout the final policy.

The use of terms "termination" and "revocation" in this policy, when describing the action leading to cessation of the privileges granted by the permit, have caused confusion among holders and agency field personnel alike. A recent amendment to the Manual (FSM 2705) clarified these terms and made their use consistent with regulations at 36 CFR 251. This action requires a conforming revision to the recreation residence policy. In most cases, the term "revocation" replaces the term "termination." To aid readers in understanding use of these terms in the final policy, they are defined as follows:

Revocation: The cessation of a special use authorization by action of the authorized officer prior to the end of the specified period of occupancy or use due to the holder's noncompliance with the terms of the authorization, failure to exercise the privileges granted, or for reasons that are in the interest of the general public. Revocations are appealable by the holder.

Termination: The cessation of a special use authorization by operation of law or the occurrence of a fixed or agreed-upon condition, event or time without the necessity for any decision or action by the authorized officer.

Several other editing suggestions are incorporated into the final policy.

Finally, many respondents offered comments on provisions of the policy that were not addressed in the Assistant Secretary's appeal decision. For example, several respondents objected to the provision in the permit which requires holders to "inspect the lot and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals." (Permit provision IV.G) This provision was in the permit adopted as part of the August 10, 1988, policy. As such, it was not considered in this revision of that policy. The agency appreciates receiving these comments. They are an indication of holder concerns and will be considered as the policy is updated and kept current.

Specific Comments and Response

The October 10, 1991, **Federal Register** notice requested public comments on a proposed revision to the recreation residence policy. The material in that notice was arranged in 7 discussion topics that grouped the revisions into elements or segments of the four agency directives that bear on recreation residences. These 7 discussion topics are also used in this notice. However, the entire recreation residence policy is presented in this notice so that readers can see the revisions in the context of the complete direction.

Many of the respondents offering specific comments also asked that key provisions and phrases from one part of the policy be added to provisions elsewhere in the policy to lend emphasis or clarity to the provision. The Forest Service advises that the redundancy occurring as a result of this would be inconsistent with agency directive system policy. Readers are also advised that Forest Service direction for administering recreation residence permits, or any other type of special use authorization, does not stand alone in the agency's administrative manual or handbooks. The direction in this notice is dependent on overall direction affecting the entire special use program which appears in Federal Regulations at 36 CFR part 251, subpart B, and titles 2300 and 2700 of the Manual. In addition, other direction affecting the management of the National Forest System bears upon the recreation residence policy. In particular, direction dealing with planning for all land and resource management activity and related direction dealing with environmental analysis and compliance with the National Environmental Policy (NEPA), found at FSM 1920, and FSM 1950 and FSH 1909.15, respectively, greatly influences the direction contained in this notice. The agency has added cross-references where appropriate when a specific policy provision is guided by broader policy direction.

1. Validity of the Recreation Residence Use. The proposed direction at FSM 2347.1 set forth the basic policy on recreation residence use and continuance. The beginning paragraph of that section established that recreation residences were a valid use of National Forest System land and an important component of the overall National Forest recreation program. A clear statement of policy followed stating that the use could continue to occupy the Federal lands. The purpose of this revision was to place the recreation residence use on an equal footing with other uses when decisions involving allocation of the land were being made.

Comments. There were 738 comments received on this proposed policy. Most supported the policy statement and suggested it be strengthened. For example, several respondents suggested the following language: "Therefore, when considering nonrenewal of recreation residence permits for an alternative use be sure that the value of the alternative public use is equal to, or exceeds the value of the existing recreation use." Other respondents opposed the provision, stating that it overstated the importance of the use and that such words as "important" implied that other uses were not important. It was suggested that the word "equally" be placed before the words "valid" and "important" to provide better balance to the policy statement.

Response. The Forest Service believes that recreation residences are a valid and important use of the National Forests. Equally, it believes that existing uses should be allowed to continue. The agency recognizes that there may be rare instances when a use is not consistent with a National Forest's Land and Resource Management Plan (Forest plan), and the recreation residence use must give way to an alternative public use. However, the overall policy stated in this section is appropriate to ensure that any decision to not allow a new permit for an established use to be issued must be fair and equitable and supported by careful analysis and documentation. The Forest Service is satisfied that the policy statement in FSM 2347.1 adequately establishes the appropriateness of the recreation residence use without the need for further clarification and will adopt the language as proposed.

2. Conformity to the 1915 Term Permit Act. This topic is confined to one provision of the proposed policy. Proposed paragraph 2 of FSM 2347.03 stated: "Ensure that recreation residence use does not preclude the general public from full enjoyment of the natural, scenic, recreational, and other aspects of the National Forests as stipulated in the Act of March 4, 1915 (FSM 2701)." This provision was placed in the proposed policy to emphasize this requirement of the 1915 Act and uses words from the Act. This provision was worded similarly in the 1988 policy but placed

in a different location. The provision was moved into the policy section in the 1991 proposal to give greater emphasis to the direction and thereby respond to the appeal decision's direction to make the policy neutral.

Comment. There were 996 comments addressed to this provision of the proposed policy. The word "ensure" was the focus of nearly all of the comments. Respondents felt that use of this word, conveying certainty of action, changed the intent of the 1915 Act language and would lead Forest officers, upon determining any impact on "full enjoyment," to conclude that the permitted use should not continue. (It should be noted that "ensure" was used in the provision in the 1988 policy.) Some respondents pointed out that it would be impossible for a Forest officer to ensure compliance with the Act. Other respondents stated that the provision in the 1915 Act was not intended to discourage continuation of the use. They pointed out that the Act does not establish priority of use (recreation residence versus other public uses), thus an equality, not an hierarchy, of use is implied.

Response. The Forest Service agrees that the word "ensure" is inappropriate in this provision and that equality in the consideration of uses is required. Further, the agency finds that the location of a provision in FSM 2347.03 dealing only with recreation residences is not correct. The subject of Manual section 2347 is "Non-commercial Recreation Use," a broad category encompassing privately built and owned structures of which recreation residences are but one. Also included in this category of use are private clubs and lodges, houseboats, boat docks and wharves, and shelters. All of these non-commercial uses come under the guidance of the 1915 Act. The agency believes the guidance is appropriate but must be revised to reflect the broader scope of the FSM section. Therefore, the provision is retained but renumbered as paragraph 3 to reflect a more logical sequence of direction. The provision has been rewritten to remove "ensure" and to substitute "non-commercial recreation sites" for "recreation residences." The reference to the 1915 Act is also removed to avoid redundancy, as this Act is cited in the list of authorities under which term special use authorizations can be granted (FSM 2701).

3. Determination of Permit Renewal and Nonrenewal. The provisions of the proposed policy dealing with continuation of the recreation residence use, conversion to alternative public uses, and the analysis and decision-making process involved in these actions brought forth the largest number and most detailed comments. There were over 1,900 comments directed to these policy provisions, many of which were very detailed, and offered lengthy revisions to the proposed policy. This is to be expected as these provisions are at the core of the appeal decision and are central to the holders' concern that they will be able to continue the use. For ease of analysis, the discussion is separated into the four parts of the proposed policy that cover this topic.

a. Recreation Residence Continuance. The applicable direction is found at FSM 2347.03 and 2721.23e. The broad direction on continuation of the recreation residence use (paragraph 3, FSM 2347.03 of the proposed policy) stated: "Continue to authorize those existing facilities now occupying National Forest land under special use authorization that (a) are consistent with management direction given in the Forest Land and Resource Management Plan, (b) are at locations where the need for an alternative public purpose has not been established, (c) do not constitute a material, uncorrectable offsite hazard to National Forest resources, and (d) do not endanger the health or safety of the holder or the public." The proposed policy's guidance on the decision to reissue the permit is found at FSM 2721.23e, paragraph 1 as follows: "The Land and Resource Management Plan (Forest plan) provides direction for continuance of the recreation residence use (FSM 1920). As Forest plans are revised, recreation residence use shall be explicitly addressed in the plan through delineation of management areas and associated management area prescriptions (FSM 1920)."

Comment. There were 136 comments received on these two provisions of the proposed policy. The use of the Forest plan as the means of determining recreation residence continuance is the most significant departure the proposed policy makes from the 1988 policy. Most of the respondents were suspicious of this change, stating their concern about inconsistent or arbitrary local treatment of the residences, inability to participate in the decision-making process involving Forest plans, and the failure to use environmental analysis standards when amending or revising Forest plans.

Respondents felt that the decision process on continuance was flawed because continuance was determined by whether the use was consistent with the Forest plan. They advocated a return to the process described in the 1988 policy which stated the decision to continue the use was to be made by a separate, free-standing analysis that did not depend on the language of the Forest plan. In the proposed policy, the consistency determination in the context of recreation residences would be made on the basis of a comparison to the land and resource allocations made in the Forest plan. If land allocated to the recreation residence use was consistent, the use could continue. If not consistent, the use would be analyzed to determine if it could be made consistent or must be removed in favor of the proposed action, or alternative public use.

Other respondents described the policy provision allowing continuance of those existing facilities which ". . . are at locations where the need for an alternative public purpose has not been established" as a "Pandora's box," since there are always alternative purposes. They were concerned that the direction provided no guidelines or criteria for use in weighing alternative uses of National Forest land and thus would allow decisions which were arbitrary and capricious. The respondents asked for a definition of alternative public purpose.

Others opposed these provisions because they believed use of the phrase "continue to" biased the decision to offer a new permit.

Finally, respondents felt that the determination of whether the use should continue based on a policy promulgated by the agency's Washington Office could result in arbitrary action by individuals removed from the issue as it should be addressed. They suggested instead that each location should be viewed on its own and not be part of a nationwide policy. Conversely, some respondents felt the proposed policy left too much up to the whims of local forest officials where decisions could be made arbitrarily and capriciously without regard to national policy.

Response. The proposed policy significantly changed the 1988 policy's direction in the way recreation residence continuance decisions would be made. Making the Forest plan the foundation for the decision to continue the use is a major departure from the "analysis of continuance" process set forth in 1988 policy. Most permit holders are not familiar with the forest planning process that produces the individual National Forest Land and Resource Management plan. In fact, many indicated they were unaware that a plan encompassing all activities on the National Forest existed. Those that were aware of the planning process often did not make the link between their

permitted use and the broad guidance set forth in the plan.

The agency recognizes the significance of this departure from previous policy. However, it must be guided by statutory authority and its own implementing direction. The National Forest Management Act of 1976 requires the agency to use an integrated, interdisciplinary forest planning process to make the land and resource allocation decisions for each National Forest. Further, section 6 of the 1976 Act requires that all permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the Forest plan. Thus, recreation residence use and continuance must be brought into compliance with that direction.

Respondents' concerns that use of the Forest plan to guide permit continuance decisions or determining alternative public purposes reflects the lack of understanding of the planning process. The planning policy sets forth clear direction to involve all affected parties and the public when amending or revising a Forest plan. These requirements are emphasized in the proposed recreation residence policy which requires notification and involvement of holders and their representatives (FSM 2721.23h, paragraph 2). The agency believes that requirements that holders be involved in all actions affecting the recreation residence use are adequately covered in the policy and will not lead to inconsistent or arbitrary treatment of the use during Forest planning.

Environmental analysis is the cornerstone upon which decisions by local agency officials rest. Agency policy on environmental analysis at FSM 1950 and FSH 1909.15 is clear and detailed. Actions which affect the Forest plan, including those which implement the plan must be supported by environmental documentation. Respondents concerns that the recreation residence use will be adversely affected through a process that they are not informed of or involved in must consider this policy in its entirety and recognize that long-established agency policy would not permit this to happen.

Use of the term "alternative public purpose" in the proposed policy reflects the agency's recognition that the Assistant Secretary's appeal decision required decisions on continuance to be made in a neutral manner. The holders' desire for continued use cannot be considered superior to other public uses but must be judged in the context of the overall use of the land. The word "alternative" is intended to convey the concept of equality of use instead of superiority of one use over another. The agency recognizes that the recreation residence use must be considered equally when considering allocation of land and resources through the Forest planning process. On the other hand, it does not, indeed, it cannot, place the use at a higher level than other uses in the Forest planning process. It is the Forest planning process which defines and limits alternative public uses through allocation of land and resources. Alternative public uses can only be those which the Forest plan defines. Thus, the phrase is considered the most accurate way to portray the actions involved in recreation residence continuance and will be retained in the final policy.

The agency rejects respondents' concerns that the term "continue to" in FSM 2347.03, paragraph 1, lends bias toward renewal of the permit. The term is fully consistent with policy stating that the use is a valid use of National Forest land. Further, it is limited by the language which follows in the provision.

The agency also rejects respondents' objections to policy promulgated at the national level which cannot adequately address local conditions affecting the use, and, conversely, that such decisions should not be made by local officials. The proposed policy balances national policy on recreation residence use with a planning and decision-making process made at the individual National Forest level. This decentralized process is considered the most appropriate way to manage these Federal lands.

Therefore, the agency will adopt the language of the proposed policy at FSM 2347.03, paragraph 3 (renumbered as paragraph 2 in the final policy), and FSM 2721.23e, paragraph 1, pertaining to continuance of the use unless the use is at a location where an alternative public purpose has been established through the Forest planning process. Paragraph 1, FSM 2721.23e, has been edited for clarity and consistency with the forest planning process.

b. Use Consistent With Forest Plan. The proposed policy at FSM 2721.23e, paragraph 2, provided guidance when making decisions on continuance of the use. It stated: "Decisions to issue new recreation residence term permits following expiration of the current term permit require a determination of consistency with the current Forest plan. Make this determination by evaluating the extent to which continued recreation residence use adheres to the standards and guidelines contained in the management prescription for the appropriate management area. Address continuation of recreation residence use on a tract or group of tracts basis, not on individual sites." Subparagraph a then sets forth direction when recreation residence use was consistent with the current Forest plan. When the use was consistent with the plan, the use would continue, a new permit issued, and the decision to issue categorically excluded from environmental documentation, unless "extraordinary circumstances" were present that would merit analysis of environmental effects. The procedural direction in FSH 41.23a provided detailed instructions on issuing new permits when the use was consistent with the Forest plan.

Note: The 1991 proposed policy advised that the agency was currently revising its policies and procedures for complying with NEPA and that the adoption of final NEPA policy could affect the direction contained in the proposed policy relating to environmental analysis and documentation. The final NEPA policy was adopted on September 18, 1992 (57 FR 43180), and does affect this proposed policy.

Changes in the recreation residence policy made necessary by the final NEPA policy are noted in the following discussion.

Comment. There were 771 comments directed to this provision that gives guidance where recreation residence use is consistent with the Forest plan. While respondents favored the expedited process in issuing a new permit, nearly all stated some degree of opposition to the direction. Comments focused on the requirements for environmental analysis as the basis for a decision to continue the use, particularly the requirements relating to "extraordinary circumstances." Respondents felt that recreation residences, having been in place for many years, do not cause significant environmental effects and the decision to issue a new permit should be categorically excluded from environmental documentation. Respondents also suggested that requiring environmental analysis was unnecessary, redundant, and costly. They suggested that the requirement be severely limited and each decision to prepare environmental documentation be reviewed by superior officials before being implemented.

Respondents expressed concern that extraordinary circumstances, described in the notice as including the presence of threatened or endangered species or their critical habitat, flood plains, wetlands, archaeological sites, or historic properties or areas, were present in nearly every recreation

residence tract, and thus would always trigger further environmental analysis even though the recreation residence has existed within such circumstances and without causing adverse impacts. Respondents pointed out that the fact the use was consistent with the Forest plan would be rendered meaningless because all uses would be subjected to an environmental analysis or environmental impact statement before a new permit could be issued. They felt that this requirement was too open-ended and discretionary and would allow generalities, such as open space, visual corridors, or general forest areas to be defined as extraordinary circumstances. They recommended that the presence of an assumed extraordinary circumstance should not in itself preclude continuation of the use, or create a presumption of inconsistency with the Forest plan, until analysis proves the circumstance to be truly extraordinary and continued recreation residence use a threat to the environment. One respondent suggested that extraordinary circumstances be limited to those which are new and did not exist in the period shortly before the time when a decision on continuance is to be made, and that the presence of endangered species, for example, in the area of recreation residences should not automatically trigger the preparation of an environmental analysis or impact statement.

The direction in FSH 2709.11, section 41.23a, providing procedural direction on continuing the use and issuing a new permit, brought forth comments cautioning against "useless and unnecessary EA or EIS studies." These respondents suggested that extraordinary circumstances should not automatically require preparation of environmental analyses. Other respondents suggested that the entire section 41.23a be removed since the guidance prejudges, skews and appears to bias the process.

Response. The Forest Service agrees the proposed policy and procedures applicable when recreation residence use is consistent with the Forest plan is unnecessarily complex. It also agrees that situations under which extraordinary circumstances would apply to permit continuation are too broad and need refinement. When use is consistent, the policy should provide an expedited process resulting in a new permit. The Forest plan is the means by which environmentally sensitive areas are identified and managed. The presence of extraordinary circumstances should not force additional environmental documentation unless it is clearly established that a material adverse environmental effect could result by continuing the use.

Accordingly, the agency has substantially revised the proposed policy at FSM 2721.23e, paragraph 2, and FSH 2709.11, section 41.23a. This revision recognizes the public comments and the final revised NEPA policy and procedures adopted by the agency in 1992. The NEPA policy substantially clarified previous policy for excluding actions from environmental documentation. Further, the agency has chosen to minimize its direction on environmental documentation in the final policy and guidance and instead refers to the NEPA policy found in FSH 1909.15.

Briefly, recreation residence uses that are consistent with the Forest plan will, upon expiration of the current term permit, be issued a new term permit. The environmental documentation supporting the Forest plan will, in most cases, be sufficient for documenting the decision to continue the recreation residence use.

When issuing new permits, a record of decision or decision notice and finding of no significant impact would be prepared only if the recreation residence use was not specifically approved in the Forest plan decision document. Issuance of a new permit is an implementation action of a Forest plan decision approving recreation residence use. The NEPA compliance requirement is fulfilled by the Forest plan environmental impact statement. Recreation residence use which has changed since being found consistent with the Forest plan would require further NEPA analysis and documentation. In most cases this analysis would cause the action to fall within a category of actions excluded from NEPA documentation.

An exception to the above may occur if the environmental documentation supporting the decision to continue the recreation residence use is more than 5 years old at the time of permit expiration. This requirement is set forth in the agency's Environmental Policy and Procedures Handbook (FSH 1909.15, sec. 18.03) and is based on the Council on Environmental Quality's "Forty Questions" document.

The action necessary to issue the new term permit would commence two years before permit expiration and the holder notified of the action. New permits that continue the use would contain updated clauses that reflect current Department of Agriculture regulations and other Federal, State, or county laws applicable to the area covered by the permit.

Therefore, the agency is adopting final policy as described above. This is set forth at FSM 2721.23e, paragraph 1.

c. Use Not Consistent With the Forest Plan—Project Analysis. The proposed policy at FSM 2721.23e, paragraph 2b, provided direction on action to be taken when the recreation residence use was not consistent with the Forest plan. Procedural guidance at FSH 41.23b described the procedure to follow in conducting a project analysis. The recreation residence use would be inconsistent when the lands currently authorized for recreation residence use are allocated to other public uses by the Forest plan. Continued recreation residence use would thus be inconsistent with new management prescriptions, standards and guidelines. This could occur when a Forest plan defines a management area of the National Forest for developed recreation use and an amendment to the plan changes this to threatened or endangered species habitat. The recreation residence use would then apparently be inconsistent with the new management area designation. In this case, a "project analysis" would be prepared to determine whether the use could be accommodated along with the alternative public use, or must be removed upon permit expiration.

The project analysis would identify a range of public uses consistent with the Forest plan direction, including consideration of continuing the recreation residence use, that would be compatible with the management area designation. If this analysis indicates the recreation residence use could continue, a decision would be made to issue a new permit upon expiration of the current permit. Since continuation of the use had been determined to be inconsistent with the Forest plan, the plan would have to be amended to accommodate the changed determination. If the analysis indicates that the use cannot continue, the holder would be notified that a new permit will not be issued upon expiration of the current permit. In this event, the holder would receive at least 10 years of continued occupancy from the date of notification and may be offered an alternative location, or in-lieu lot, for the use.

Comment: There were 998 comments received on this provision of the proposed policy. Many respondents were concerned that use of the Forest plan to determine whether the recreation residence use should continue was inappropriate because the plan could never focus on the specific and different issues that a proper analysis of the use demands. Others felt

that in reality the decision on recreation residences would be made in the plan and that the project analysis would only serve to verify that decision. They felt that the phrase in the provision "implement the new direction" implied that a decision had already been made. They recommended this provision be eliminated since it assumes an inconsistency prior to a finding. Instead, they recommended that new management direction be "reviewed" to emphasize that the project analysis was not a sham.

Nearly all of the respondents commenting on this provision of the proposed policy stated that the proper sequence of planning should have the project analysis prepared before the Forest plan is amended or revised and be the basis for the amendment or revision. This concern is the basis for respondents' recommendation that a determination of inconsistency be made only on the basis of a self-contained, site specific project analysis that follows all environmental analysis requirements. Respondents also expressed misgivings that the process called for in the provision conveyed a bias against the use.

These concerns can be summarized by the comment of one respondent: "The 1988 policy required a specific environmental analysis for any decisions pertaining to 'inconsistency' with the Forest plan. In the draft policy inconsistency is now decided within the Forest plan WITHOUT ANY EFFECTIVE RULES. This is just not reasonable and is unfair."

Several respondents expressed concern that recreation residence permit holders would not be involved in the actions leading to adoption of Forest plan amendments, or that their participation would not be sought until the basic decisions on land use had been made. They asked that permit holders be a part of the entire process.

Comments on the procedural guidance in FSH 41.23b for completing project analyses focused on the addition of or emphasis on the factors and considerations to be included in the analysis. Several suggested recognition of environmental, economic and social costs of removing the recreation residences. Others recommended that cost/benefit analysis of removal be included in the analysis. Several respondents suggested that the standards and guidelines for the project analysis were substantially weaker in the proposed policy than those in the 1988 policy and recommended that the earlier language be restored so that there was consistency between all National Forests. Many suggestions were received that could be used to edit and clarify the proposed guidance in FSH 41.23b.

Response: The respondents to this section of the proposed policy did so under a distinct disadvantage. The proposed policy describing Forest planning, NEPA analysis, and public involvement processes affecting the recreation residence use was based on more complete, overall guidance set forth elsewhere in the Manual and Handbooks. The proposed direction for this specific use, therefore, was supplemental to that overall guidance. Respondents were not aware of or did not have access to this overall guidance. They sought to resolve their concerns or objections by recommending more complete descriptions of the processes or clarification of procedures relating to recreation residence continuance. Thus, many of the comments summarized above could be responded to by simply stating that the concern is thoroughly treated elsewhere in FSM or FSH.

The agency is sympathetic to the respondents' dilemma. However, it disputes the contention that actions affecting recreation residences during forest planning occur without any effective rules to guide them. The rules (direction) are clear and thorough. The agency's dilemma is that its directives policy prohibits repetition and redundancy in manual and handbook material for the sake of emphasis or clarity. Direction guiding the forest planning process is found in FSM 1920.

To resolve this dilemma, the agency has placed references at appropriate places in the final policy so that local agency officials and holders are aware of overall direction that influences the specific direction on recreation residence use. And, the agency believes that respondents' concerns about forest planning, consistency determinations, and applicability of NEPA, will be resolved as holders become more knowledgeable about the forest planning and environmental analysis processes. Most respondents acknowledged that the recreation residence use should be recognized in the Forest plan. Likewise, holders should recognize that it is in their interest to be involved in the forest planning process, not only to protect their interests in their recreation residences, but to demonstrate that they are part of the National Forest community and interested in its overall management. The Forest Service believes this final policy will encourage holder participation in the forest planning process.

Agency policy on forest planning and NEPA evaluation does not allow a decision to remove recreation residences to be made by the Forest plan. The process for implementing a Forest plan, explained in FSH 1902.12, requires that any use that appears to be inconsistent with new management direction must be analyzed and evaluated before any decision is made to discontinue that use. In section 2721.23e, paragraph 1b, of the final policy, the agency has clarified this point by revising the heading to read "Use Apparently Not Consistent With the Forest Plan." This revision is intended to reinforce the point that an inconsistency determination does not result in removal of the use, only that such action is possible. A decision on removal of the use cannot be made until a project analysis is completed.

Project analysis should not precede forest planning. The overall direction contained in a Forest plan is the foundation upon which all land and resource activities of the National Forest are based. The Forest plan promotes more integrated consideration of all land and resource management activities. The direction in the proposed policy providing for project analysis following implementation of the Forest plan and identification of apparent inconsistency remains unchanged in the final policy.

Respondents' concerns that permit holders would not be involved in Forest planning is unfounded. Overall direction in FSM 1950, FSH 1909.15, and 36 CFR Part 216 requires local Forest Service officials to seek the views of the public, including holders of authorizations to use National Forest land. Further, the direction in the proposed policy at FSM 2721.23h and FSH 2709.11, section 41.23b, paragraph 1 would require local officials to involve permit holders in activities involving Forest plan amendments and revisions, implementation of plans, and project analyses. The agency believes this direction is adequate to ensure holders' awareness of any action affecting their use: Thus, the proposed policy in this regard remains unchanged in the final policy.

The guidance in section 41.23b has been selectively revised to recognize the suggestions of several respondents. The first sentence of the section has been rewritten to reflect that Forest plan amendment or revision does not necessarily make the recreation residence use inconsistent with new management direction. Rather, it reflects that continued use under the new management direction is uncertain and a site specific project analysis is required to verify the inconsistency. Paragraph 2 of this section of the proposed policy, titled "Analysis Documentation" and describing the

content of the project analysis report and NEPA documentation, is revised in the final policy to require information on applicable resource conditions to be included in the report. Paragraph 3a(4), requiring a comparison of benefits and disadvantages of the proposed alternative public use and the recreation residence use, has been revised in the final policy to include consideration of the cost of removing the recreation residence.

Paragraph 4 of FSH 41.23b of the proposed policy, describing the project analysis decision and documentation, has been extensively revised to clarify the process by which a decision is reached. Three possible decisions are outlined: (1) If the project analysis results in a decision to amend the Forest plan such that continued use will not be inconsistent with the proposed alternative use, a new term permit would be issued upon permit expiration; (2) if the project analysis results in a decision to amend the Forest plan such that the recreation residence use is in some degree inconsistent with the proposed alternative use but does not conflict with it, or the proposed alternative use can accommodate some or all of the recreation residence use, appropriate modifications would be made to the current permit and new term permits for the applicable lots would be issued; or (3) if the project analysis results in a decision that the recreation residence use remains inconsistent with the Forest plan and cannot be accommodated with the proposed alternative use, a decision would be made that the recreation residences are to be removed. This revision adds a third possibility to the project analysis decision where the use is in apparent conflict but can be accommodated with the proposed use.

Paragraph 5 of FSH 41.23b, titled "Decision Notification," presents the requirements to be followed in notifying holders and other interested parties of the project analysis decision. Two items are added to those listed in the proposed policy: (1) Notification of whether in-lieu lots will or will not be made available, and (2) notification that annual fees will be adjusted during the final 10 years of use. The remainder of the paragraph has been edited for clarity.

d. Project Analysis Decision Review. The proposed policy at 2721.23e, paragraph 2c required the authorized officer to review a project analysis decision two years prior to permit expiration, if that decision was more than five years old. Handbook guidance at 41.23b, paragraph 6, described the procedure by which the project decision would be reviewed. The review would determine if changes in resource conditions required reconsideration of the decision. Holders and interested publics would be notified of the review. If the review indicated no change in resource conditions, the original decision would be implemented. If conditions had changed, a new project analysis would be made to determine use of the lot. A project analysis decision review would not be appealable.

Comment. Few respondents commented on this provision although a similar provision at FSM 2721.23a, paragraph 11, raised a concern among several respondents that the holder would not have an opportunity to be heard in this review.

Response. The project analysis decision review is intended to ensure that the actions which resulted in the decision remain applicable when the permit is about to expire since 8 to 10 years would have elapsed since the decision was made. This could prevent removal of a recreation residence when there is no longer a need for the alternative public use. The agency intends that the review be undertaken with the full knowledge and participation of the holder. It emphasizes that the direction in 2721.23e makes it clear that holder involvement in the review is required. The proposed policy is considered to be fully adequate and is adopted as final policy.

e. Permit Decision Process (Diagram). The proposed policy, in Exhibit 01, section 41.23c, presented in diagrammatic form the process described in section 41.23a and b by which a decision is reached to continue the recreation residence use or convert the use to an alternative public use.

Comment: Eight respondents identified problems with the chart. They pointed out that the process shown when a project analysis decision allows the recreation residence use to continue (even though it had been found to be inconsistent with the Forest plan), does not agree with the text describing that process. The respondents suggested that when the use is allowed to continue it should not be subject to further review and analysis. Instead, the use should be considered as consistent with the Forest plan and the decision process should move directly to issuance of a new permit. In terms of the diagram, the arrow from this box should move left to the line showing consistency with the Forest plan instead of downward to the box showing decision review.

Response: The Forest Service agrees with these respondents and has revised the diagram accordingly. Readers should recognize, however, that revisions in the direction and procedural guidance for continuance and removal of the use, discussed earlier in this notice, have also required revisions to the chart. The diagram appears in the final policy as section 41.23c.

4. Permit Issuance and Term. The proposed policy at FSM 2347.1, paragraph 3, and at FSM 2721.23a, paragraph 9, stated that permits for recreation residence use would be issued for a maximum of 20 years. Paragraph 10 of FSM 2721.23a provided direction for permit issuance following a decision to convert the lot to an alternative public use. In this event, the current term permit would be allowed to expire and a new term permit issued for up to 10 years to satisfy any additional time because of the 10-year notification requirement.

Comment: There were 224 responses to these permit issuance and term provisions. Most respondents supported the 20-year term for recreation residence use, and the 10-year notification in case of conversion to an alternative public use. A few respondents preferred 30-year permits. Others objected to the 10-year notification with continued occupancy provision and the granting of additional time beyond the originally authorized term to satisfy notification requirements, stating that the holder accepted the original term and provisions, and should not receive these favorable considerations.

Response: The Term Permit Act of March 4, 1915, authorizes terms up to 30 years. The Forest Service's long-standing policy has been to issue permits for 20-year terms, and if the use is to be terminated, the additional 10 years granted will keep the total length of the permit within the statutory limit. Also, specifying a maximum term of 20 years provides local agency officials flexibility in establishing length of terms to accommodate local needs. For example, if the official wished to have all permits on an administrative unit expire in the same year for efficiency in administration, a term of 18 years may be needed to match terms of permits issued earlier. The agency does not agree to elimination of the 10-year notification requirement or the provision providing additional occupancy when the use is to be removed. The investment in the recreation residence and the length most have been in existence make the agency's policy on notification and tenure fair and equitable. Readers are reminded that the agency does not pay a permittee for the value of the

improvements when a permit expires under its own terms and must be removed. The agency is satisfied that a 20-year term for recreation residence term permits is appropriate and will adopt this provision in the final policy. However, to clarify that shorter terms may be dictated because of permit expiration and conversion of the lot to another public purpose, the provision is modified to reflect this exception to the 20-year term. This direction ensures compliance with the Assistant Secretary's appeal decision concerning indefinite tenure. This revised policy is also consistent with the final policy provisions requiring that decisions on continuance or removal of the use be based on the direction in the individual National Forest plan.

5. Annual Fees in Event of Nonrenewal. The proposed policy at FSH 2709.11, section 33.2, responded to the appeal decision's direction to reconsider the 1988 policy's direction for determining fees when a holder is placed on notice that a new permit will not be issued; that is, when the permit is placed on tenure. Three provisions in this section were examined in the proposed policy. The opening paragraph of this section stated that fees would be reduced 10 percent yearly during the 10-year notification period. This maintained the provision in the 1988 policy. The second provision (numbered paragraph 1) provided that in the event the decision to remove the recreation residence was reversed and the holder was given a new 20-year term permit, the Forest Service would recover all fees foregone while the permit was under notice it would not be renewed. This changed the provision in the 1988 policy which provided that 50 percent of the fees would be recovered. The third provision (numbered paragraph 2) provided that in the event of a reversed decision and a new permit was issued with a term of less than 10 years, fees foregone would not be recovered, but the fee would be reduced by 10 percent for each year the permit was under tenure notice (for example, fees for a 6-year tenure would be 60 percent of the full fee). This maintained the policy set forth in the 1988 policy provision.

Comment: There were 84 comments on these provisions of the proposed policy. Most respondents asked that the 50 percent fee recovery provision of the 1988 policy be reinstituted. They stated that the market value of the use is reduced when permits are placed on tenure, and, as the agency is required by law to charge fees based on fair market value, the 50 percent recovery is more than fair because the recovery amount should be zero. Others pointed out that the Forest Service's explanation that no precedent could be found in the private market providing for 50 percent recovery and therefore requiring full repayment of foregone fees was true because the private market would not recover foregone fees. On the other hand, several respondents asked why a holder should be entitled to reduced fees since it is not common practice in the private real estate market for a lessor to reduce rental fees when not renewing a lease, especially when the improvements must be removed by the lessee. One respondent asked whether fees for permits under tenure were subject to the same annual index adjustment as permits not under tenure.

Response: The agency decision in the 1988 policy to reduce fees when permits are placed on tenure was based on its understanding of common practice in the private real estate market. Reexamination of this question in view of the appeal decision does not provide information to contradict this earlier decision. The agency is not persuaded by respondents' statements contradicting its understanding of the private market. Therefore, the provision to reduce fees 10 percent for each year the permit is under tenure will be maintained in the final policy. (Section 33.2)

The agency based its decision to recover all fees foregone when a new 20-year permit is given for a use formerly under tenure because it could not confirm this was a common practice in the private real estate market. It also received legal advice that it had no authority to forgive fees foregone in this instance. Upon reexamination of this issue for preparation of this final policy, it again was not able to confirm that not recovering fees foregone is standard practice in the private market. Thus, the agency will keep this provision in the final policy. (Section 33.2, paragraph 1)

The agency is also maintaining the provision from the proposed policy that when holders with permits on tenure are given new permits with terms of 10 years or less past fees foregone are not recovered and fees for the new term are reduced 10 percent a year. Holders who receive an additional period of use but do not get a full 20-year term permit do not have the full value of the use and thus should not pay a full fee. This provision is adopted consistent with the provision to reduce fees when permits are placed on tenure. The second sentence of this provision has been edited to clarify its intent. (Section 33.2, paragraph 2)

Readers should note that the third paragraph in this section, describing action to be taken when holders with permits on tenure are given new permits with terms of 10 to 20 years, was not revised in the proposed policy and remains identical to the language in the 1988 policy. In this case, fees are to be recovered in full.

6. Offering of In-Lieu Lots. The appeal decision faulted language in the 1988 policy that made the offering of in-lieu lots mandatory to holders who have received notification that a new permit would not be issued or whose permits have been terminated. (FSM 2347.1,6; FSM 2721,23a,13; FSM 2721.23f; FSH 41.23c.)

As explained in the 1991 notice of proposed policy, the intent of the 1988 policy was to make the offering of in-lieu lots discretionary. It was use of the word "shall" in one sentence of the policy that conveyed the impression that offering of in-lieu lots was mandatory. In addition, however, the appeal decision expressed concern that making in-lieu lots available to holders receiving notice that their use was to be terminated or that they would not receive a new permit limited agency management discretion in determining use of National Forest land. Therefore, each of the four provisions in the 1988 policy dealing with the offering of in-lieu lots was examined. As a result, the 4 provisions dealing with in-lieu lots were revised in the proposed policy.

The overall policy on offering in-lieu lots to holders who had been notified that a new permit would not be issued or whose permit was being terminated prior to expiration (except when the termination is for noncompliance) was stated at FSM 2347.1, paragraph 6, of the proposed policy. This provision directed agency officials to determine the availability of in-lieu lots for eligible holders. It described sites available for in-lieu lot purposes as those in nonconflicting locations in established recreation residence tracts within the National Forest containing the recreation residences to be removed or in established tracts in adjacent National Forests. Lots appropriate for in-lieu purposes were undeveloped lots within or adjoining established recreation tracts not needed for other public purposes and lots formerly occupied and now vacant. This provision also directed that new recreation residence tracts could not be established for in-lieu lot purposes. This reversed the 1988 policy which stated new recreation residence tracts could be established for this purpose.

Direction in FSM 2721.23a of the proposed policy, provided that in-lieu lots could be offered when a recreation residence was destroyed or substantially damaged by flood, avalanche, or

massive earth movement and the holder was not allowed to rebuild. The 1988 policy stated that every reasonable effort should be made to offer in-lieu lots in this event.

The proposed policy in FSM 2721.23f. presented direction in cases of nonrenewal of permits and conversion of lots to alternative public purpose. It stated the lots may be offered if available and not needed for alternative public purposes. The 1988 policy provided that every reasonable effort should be made to offer the lots.

The guidance in FSH 41.23c of the proposed policy, gave detailed procedures on the offering of in-lieu lots. The offer would be made when notice was given that a new permit would not be issued. If a lot became available within 12 months of the notification it could be offered then. Priority was to be given to lots in the same recreation residence tract or an expansion of that tract. Holders would be allowed 90 days to accept the offer of an in-lieu lot and upon acceptance the lot would be reserved for that holder and a new permit issued. A fee would not be charged until construction of the improvements began. The lot reservation would expire if the holder failed to occupy the in-lieu lot on agreed upon schedule. Holders accepting offers could continue to use the current lot until the permit expired, but they should be prepared to move to the new lot 24 months prior to permit expiration. If accepted by the previous owner, the offer of an in-lieu lot would be extended to a new owner.

The proposed Handbook guidance differed in several respects from the 1988 policy. The proposed guidance limited availability of lots to those becoming available to 12 months. Tracts could not be established specifically for in-lieu lot purposes. Holders were to be given a new permit when the offer of an in-lieu lot was accepted, a new requirement. Fees were to be charged when construction began rather than when improvement of the lot began, a clarification. Holders were to be prepared to move within 24 months of permit expiration rather than when the current use was removed, also a clarification.

Comment. There were 359 responses to the in-lieu lot provisions of the proposed policy. Several respondents felt that the Assistant Secretary's appeal decision required only that the 1988 policy be changed to assure that the offering of in-lieu lots was not mandatory. Respondents overwhelmingly objected to the changes made by the proposed policy from the 1988 policy. Summarized, the respondents felt that the number of sites available for in-lieu lots available should be as large as possible and should include authority to establish new tracts for this purpose. The general belief was that a weak in-lieu lot program, when coupled with a policy of no new tracts for this purpose, would, through attrition, eventually lead to removal of all or most recreation residences. A much smaller number of respondents maintained that the offering of in-lieu lots should be discretionary and that no new tracts should be established for this purpose.

Respondents also objected to the removal of the phrase "every reasonable effort" when directing local officials to provide in-lieu lots to terminated or nonrenewal permits. They felt that this subtle change in wording reversed long-standing Forest Service policy to offer in-lieu lots in nonconflicting locations. They recommended that the proposed policy be strengthened or the language of the 1988 policy be restored.

Another group of respondents felt that the proposed policy ignored the Assistant Secretary's appeal decision. They felt that any lots available for in-lieu lots should be made available instead to the general public for recreation residences. Their view was that the holder whose permit expires and is notified that a new permit will not be issued acquires no more rights to available lots than any other member of the public and should not receive any preferential treatment. Generally, this group of respondents felt the entire policy of offering of in-lieu lots should be deleted but if retained should be limited strictly to lots available within existing recreation residence tracts.

Responses to the proposed policy provision on in-lieu lot availability following destruction of the improvements by catastrophic event (FSM 2721.23a, paragraph 13) reflected a similar division of views as was found in the overall policy. Some felt allowing a holder to rebuild the improvements or to receive an in-lieu lot extends the use indefinitely and is contrary to the appeal decision. Others felt the proposed policy was not clear with regard to when rebuilding the improvements would be "consistent" with Forest plan. Several suggestions were made to clarify this provision. Many respondents commented on the inclusion of fire in the list of catastrophic events to which this provision applies. This had been suggested in the September 1989 Advance Notice of Proposed Policy. Respondents overwhelmingly opposed the listing of fire in this provision. They felt the risk of loss of the recreation residence from fire is inherent in a forest setting and thus should not be cause for permit termination.

Respondents commenting on the proposed Handbook direction at FSH 41.23c pointed out what they believed was more restrictive language than in the 1988 policy. Specifically, they cited the 12 month limit on offering an in-lieu lot, the 90-day limit on holders acceptance of the lot offer, and the requirement that occupancy of the in-lieu lot begins when construction begins.

Response. The Forest Service does not agree that the reformulation of the in-lieu lot provisions of the 1988 recreation residence policy should be limited to the question of whether the offer is mandatory or discretionary. The appeal decision questioned the policy on offering of in-lieu lots and directed that all provisions of the policy dealing with this issue be stayed from implementation and reconsidered. The agency, in its September 1991 proposed policy, modified it to respond to the appeal decision's concern that the use was being perpetuated when in-lieu lots were offered.

Under policy stated at FSM 2347.1, the agency affirms that recreation residences are a valid use of National Forest System lands and an important component of the overall National Forest recreation program. It also acknowledges that there may be circumstances, albeit very limited, where this use is not consistent with the overall management direction for the land and the recreation residence use must be converted to an alternative public use. When these circumstances occur, however, the agency believes that holders of these uses should not be subjected to the loss of the use if reasonable options are available to accommodate the use elsewhere. Thus, it is maintaining its long-established in-lieu lot provisions in the final policy.

The agency does recognize that certain provisions in the proposed policy limited the scope of the 1988 policy and has reconsidered several provisions. In FSM 2347.1, paragraph 6, the first sentence is revised to read "Although provision of an in-lieu lot is not required, make a reasonable effort to provide a lot to holders whose lots will be converted to an alternative public use and have received notification that new permits for those lots will not be issued, or who have received termination notices (except termination for noncompliance) (FSM 2721.23e)."

The agency is maintaining the provision in the proposed policy that prohibited establishment of new tracts for in-lieu lot purposes. However, the

agency points out that it is possible under the revised second sentence of this provision to expand a recreation residence tract in order to relocate the use to accommodate a change in land use. Such could happen when a river is designated as a Wild and Scenic River and recreation residences located a few feet from the riverbank are moved several hundred feet back from the river to accommodate public use along the riverbank. The third sentence of this provision is clarified to identify locations suitable for in-lieu lots to include undeveloped lands, and formerly developed and withdrawn recreation residence lots in or adjacent to established recreation residence tracts.

The proposed policy at FSM 2721.23a, paragraph 13, describing action to be taken when a recreation residence is destroyed or substantially damaged by catastrophic event, is revised to clarify when improvements could be rebuilt or the permit terminated and in-lieu lot available.

The proposed policy at FSM 2721.23f affirmed the overall in-lieu lot policy stated at FSM 2347.1, paragraph 6, in connection with the policy on continuation of recreation residence use. The language in this provision has been revised to be consistent with the overall policy.

The language at FSH 2709.11, section 41.23c of the proposed policy provides the procedural guidance for implementing the overall policy on offering in-lieu lots. Paragraph one of this section limited the availability of lots for in-lieu lot purposes to 12 months following notification of the holder that a new permit would not be offered. The agency finds that this limitation is inconsistent with the policy requiring a 10-year notification to the holder. Lots which come available during that 10-year period should be available as in-lieu lots if not otherwise needed for other public purposes. Thus, the agency has restored the language of the 1988 policy as follows: "If lots do not become available until later, offer them then." Paragraph 3 allowed the holder 90 days from the date of a joint inspection to accept the offer of an in-lieu lot. This has been clarified to require both actions—arranging a joint inspection and providing 90 days to decide. The paragraph is also clarified to require the 90 day period to occur while access to the lot is possible. Paragraph 4 required that a new permit be issued when a holder accepts the offer of an in-lieu lot. The agency recognizes that his means the holder will have two permits for recreation residence use for a limited period of time. However, this provision has been kept in the final policy to be consistent with overall special use regulations which require all users of National Forest land to have a permit.

The agency recognizes that a holder may pay annual fees on both permits if the current use is kept while the use on the in-lieu lot is being constructed. Thus, it has inserted guidance that a partial fee waiver under existing agency policy may be appropriate on the in-lieu lot.

Readers are also advised that for consistency in terminology, the word "lot" replaces the word "site" throughout the policy when referring to in-lieu locations.

7. Termination During Term of Permit. Three provisions of the proposed policy discussed actions to be taken when a recreation residence permit had to be terminated before its term expired. The overall policy at FSM 2347.1 listed four reasons for terminating a permit: (1) When it is in the public interest; (2) when there is an uncorrected breach of a permit provision; (3) when the site has been rendered unsafe by catastrophic events; and (4) when there is other cause as provided in 36 CFR 251.60. In adding this language, the proposed policy removed a provision of the 1988 policy that required termination actions to follow the same procedures established for permit continuation or nonrenewal. Termination actions would follow procedures for the four listed events, rather than for those procedures for continuance or nonrenewal as the 1988 policy provided.

Direction at FSM 2721.23a, paragraph 16, of the proposed policy reflected revisions to the overall policy, stating termination could occur only in accordance with applicable regulations and the terms and conditions of the permit. It also required the authorized officer (Forest Supervisor) to submit a proposed termination for review by the next higher official (Regional Forester). This review would only examine the adequacy of the analysis and documentation. If deficient, the proposed action would be returned to the authorized officer for correction and reconsideration. This provision also proposed use of the term "monies" in place of "appropriations" as used in the 1988 policy to describe the requirement that the Government must pay for the holders improvements if terminating a permit before expiration of its term, except when termination is the result of breach of the permit's provisions.

The proposed policy at FSM 2721.23i gave direction only for termination actions resulting from noncompliance of the terms and provisions of the permit. It required written notice to the holder and a reasonable period to correct the violation. The action could be taken only if noncompliance continues after the holder receives notice and the period allowed for correction. This provision was nearly identical to the 1988 policy.

Comment. There were 5 responses to these provisions of the proposed policy. Respondents felt the phrase "in the public interest" was vague and apparently confused the phrase with direction elsewhere in the proposed policy dealing with permit expiration and alternative public use. They felt that termination should occur only when covered by the Forest plan and other alternatives to removal of the use considered. Most of the respondents agreed that termination during the permit term should occur only when funds are available to purchase the improvements. They agreed that the word "monies" is preferable to the word "appropriations." One respondent, however, felt that payment for the holder's improvements should be based on the cost of the improvements less depreciation.

Commenting on the direction in FSM 2721.23a, paragraph 16, one respondent suggested that "applicable regulations" should be specified. Most of the respondents agreed that proposed termination actions by the Forest Supervisor should be reviewed by the Regional Forester but suggested that the standards for analysis and documentation for the proposed termination should be made clear.

Response. Readers are reminded that the agency, in seeking consistency in policy terminology, has substituted the word revocation for the word termination when describing actions that end a permit before the end of the term specified in the permit. Further, the word termination is used to describe the cessation of a permit as a result of a fixed or agreed-upon event, which would include reaching the end of the term specified in the permit. With this in mind, readers are advised that revocation of the permit during its term and termination of the permit are two separate and distinct actions, each unrelated to the other. Revocation of the permit occurs when one of the four actions listed in FSM 2347.1, paragraph 5, is triggered. Revocation of the permit when in the public interest is not an action resulting from direction in the Forest plan. Rather, it results from an urgent and pressing need to reclaim the land for another public use before the action can be considered through the Forest planning process and the

procedure for considering alternative public uses can be implemented. For example, the construction or relocation of a public highway may require removal of the recreation residence because the only feasible right-of-way is on land occupied by this use. Authority to revoke a permitted use before the permit term is completed is found at 36 CFR 251.60. This citation is added to this provision in the final policy. It is the need to reclaim the land before completion of the permit term that requires the Government to pay for the improvements that must be removed.

The Forest Service recognizes that an action to revoke a permit before completion of the term must be done under a procedure that ensures fairness and equity to the holder. It has revised paragraph 5 in the final policy to clarify that revocation would occur only when there is an urgent need to use the lot and the forest planning process cannot be used.

The agency also recognizes the concern of respondents that revocation actions be reviewed by a higher agency official. However, it must point out that to maintain the integrity of its current appeal regulations it cannot permit the higher level official to review a decision before it is made. When a Forest Supervisor's decision is appealed, the Regional Forester is the reviewing officer. The language in the proposed policy on review of revocation actions will be maintained in the final policy.

The agency believes that use of the word "monies" is appropriate and will retain the term in the final policy. The agency does not agree that payment for the improvements be based on the holders cost less depreciation and will retain the method set forth in the term permit.

Readers are advised that the procedure for revoking a permit when in the public interest and when the holder is found to be in noncompliance with the permit terms is set forth in part VIII of the term permit.

Revised Special Use Permit for Recreation Residences

The Assistant Secretary's appeal decision voided certain clauses of the term special use permit used to authorize recreation residences on National Forest System lands and adopted with the 1988 policy. Holders who had been offered and accepted these permits in 1988 were notified by letter that the clauses were voided and temporarily removed from the permit and would be replaced upon adoption by the agency of a final reformulated policy. The voided permit provisions were: Part VI.C.2, part IX.B, C, D, and E, and part X.B. The October 10, 1991, notice displayed the term permit in its entirety with the affected clauses reformulated to be consistent with the revisions to the proposed policy.

There were 346 comments received on the proposed permit. Nearly all of the responses were directed to permit clauses not affected by the appeal decision. The **Federal Register** notice explained that only policy provisions, and permit clauses, affected by the appeal decision were subject to review and reformulation. Hence, only those comments directed to permit clauses affected by the adoption of the final policy were considered in this analysis. These were considered with the comments made to the corresponding parts of the policy and procedural guidance.

Permit clauses are derived from basic statutes, regulations, and policy. Thus, in reformulating the policy for administering recreation residences, the agency must also revise the permit that is derived from this policy. Changes made to the policy require corresponding changes to the permit. This has been done in the adoption of this final policy. The reformulated permit is printed in its entirety at the conclusion of this notice (Exhibit 1 to FSH 2709.11, section 54.1). Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italic. Readers are advised that holders of permits containing voided clauses will be sent new clauses or new permits upon adoption of this final policy. New permits will contain the revised clauses but are identical in all other respects to the permit accepted in 1988.

Revision of Dispute Resolution Provisions

The October 10, 1991, Federal Register notice provided information on the agency's policy to resolve disputes concerning recreation residence permit administration (located at FSM 2721.23f in the 1988 policy). It pointed out that revision of the Department of Agriculture administrative appeal regulations made on January 23, 1989 (54 FR 3342) created a conflict with the dispute resolution provisions adopted in the 1988 policy. Revision of these provisions, although not addressed in the appeal decision, was necessary.

The proposed policy at FSM 2721.23h provided direction to reduce conflict between holders and the agency by providing holders with the opportunity to participate in an issue resolution process. Proposed paragraph 1 of this policy required agency officials to consult with holders and their representatives, where practicable, before issuing written decisions on permit administration in order to reach a common understanding and agreement. Proposed paragraph 2 encouraged holder involvement in the public involvement process for Forest planning, project analysis, and the permit issuance analysis process (FSM 2721.23e). This paragraph also encouraged agency officials to meet with holders and their representatives to discuss and resolve issues prior to issuing a decision. Proposed paragraph 3 provided guidance on resolving actions that have been appealed, directing that the opportunities provided in the appeal regulations (36 CFR parts 217 and 251) be utilized by the authorized officer to resolve the appeal issues by means other than review and decision on the appeal.

The Forest Service has carefully considered the direction in the proposed policy in its preparation of this final policy and determined that it adequately conveys its intent to resolve disputes with holders on recreation residence permit administration. Therefore, it is adopting without change the direction in the proposed policy (FSM 2721.23h).

Readers are advised that further revisions to the appeal regulations occurred on April 13, 1993 (58 FR 19369). That revision encourages participation in the agency's public involvement processes by expanding opportunities for pre-decisional involvement of the public in Forest Service decisionmaking. A new part 215 was added to the regulations that would give the public opportunity to comment, prior to issuance of a final decision, on proposed actions that implement National Forest land and resource management plans. Parts 217 and 251, subpart C, of the regulations continue in effect. This final recreation residence policy at FSM 2721.23h was examined in light of the new appeal regulation and found to be consistent.

Clarification of Other Provisions of the Policy

In the February 15, 1989, appeal decision, the Assistant Secretary directed the Forest Service to clarify procedures by which annual fees are determined for recreation residence use. Specifically, the agency was required to explain its rationale in adopting 3 components of the fee system: (1) Use of the period 1978–1982 as the base period for determining current fees, (2) Use of an index, the Implicit Price Deflator-Gross National Product (IDP–GNP), to adjust fees annually to current fair

market value, and (3) Use of a factor of 5 percent applied to the appraised value to determine the annual fee.

The Supplementary Information section of the October 10, 1991, Federal Register notice containing the proposed policy provided information on these three components of the fee policy. Readers were advised that the information was to be considered as supplemental, or background, information to the direction and procedural guidance appearing in the policy at FSM 2721.23d-Fee Determination and FSH 2709.11, chapter 30, section 33, Recreation Residence Fees. The information in the notice emphasized that the agency is required to obtain fair market value for the use of the Federal lands. Fair market value is determined by appraisal or other sound business management practice, such as market analysis or competitive bid. Annual fees for recreation residences are determined by appraisal. A factor of 5 percent is applied to the appraised value to determine the annual fee.

There were 55 responses to this information, which generally supported the information presented. There was some disagreement with the use of 5 percent of appraised value to determine the annual fee, the respondents stating that the factor should be higher. Two respondents felt the Consumer Price Index (CPI) should be used instead of the IPD–GNP. Others felt the adjustment, as a national index factor, failed to recognize depressed local real estate market conditions. As a result, fees were escalating upward that should have been steady or declining.

The Forest Service believes that the information presented in the notice accurately described the rationale used to develop the fee determination procedure in the 1988 policy, and that the information reflects current agency direction and policy. Therefore, the agency is adopting the explanation presented in the notice as its response to the appeal decision's direction to present the rationale for adopting the period 1978–1982 as the annual fee base period, the use of the IPD–GNP as the annual fee adjustment factor, and the use of 5 percent applied to appraised values to determine annual fees.

Having considered the comments received in response to the October 10, 1991, notice of proposed policy and having reconsidered the 1988 recreation residence policy for consistency with applicable law and regulation, the Forest Service is adopting a revised recreation residence policy that it believes is fully responsive to the Assistant Secretary's appeal decision and to the concerns of holders and other interested parties. The full text of the recreation residence policy and procedural guidance containing the revisions described in this notice as it would appear in the Forest Service Directive System is set out at the end of this notice.

Readers are advised that the current interim recreation residence policy will no longer be in effect upon adoption of this revised policy.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR 1320 do not apply.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final policy is not subject to OMB review under Executive Order 12866.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Entities affected by this policy are private individuals holding authorizations to use National Forest System lands for the purpose of constructing and maintaining a recreation residence. The requirements imposed by this final policy are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." Based on consideration of the comments received and the nature and scope of this final policy, the agency has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Dated: April 4, 1994.

Jack Ward Thomas,

Chief.

Reformulated Recreation Residence Policy and Procedures

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience of this direction is Forest Service employees charged with issuing and administering recreation residence use authorizations.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

2347—Non-Commercial Recreation Use. Section 2347–2347.12b set forth direction for special use authorization of privately built and owned structures on National Forest land. These structures are maintained for the use and enjoyment of holders and their guests. As recreation facilities, they are vacation sites and may not be used on a permanent basis (FSM 2721.23).

2347.03—Policy

1. Management non-commercial recreation use sites in accordance with basic recreation policy in FSM 2303 as valid and important components of the overall National Forest recreation program.

2. Continue to authorize those existing facilities now occupying National Forest land under special use authorization that (a) are consistent with management direction given in the Forest Land and Resource Management Plan (FSM 2721.23e), (b) are at locations where the need for an alternative public purpose has not been established, (c) do not constitute a material, uncorrectable offsite hazard to National Forest resources, and (d) do not endanger the health or safety of the holder or the public.

3. Manage non-commercial recreation use sites in such a way that the general public is not precluded from full enjoyment of the natural, scenic,

recreational, and other aspects of the National Forests (FSM 2701).

4. Deny applications for construction of new facilities except where they would replace similar existing facilities.

5. Deny any proposal for commercial activity at permitted, non-commercial recreation use sites.

6. Require non-commercial recreation use holders to maintain their sites to protect the natural forest environment. Do not allow construction or placement of non-authorized facilities on these sites.

2347.1—Recreation Residences. (FSM 2721.23 and FSH 2709.11.)

Recreation residences are a valid use of National Forest System lands. They are an important component of the overall National Forest recreation program and have the potential of supporting a large number of recreation person-days. They may provide special recreation experiences that might not otherwise be available. It is Forest Service policy to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of these residences.

1. Administer recreation residence special use permits to ensure proper use of the lot for family and guest recreational purposes (FSM 2347.11).

2. Do not approve any new authorizations for full-time residences, except in special situations to provide caretaker or other similar services where there is a strongly demonstrated need (FSM 2347.12). Do not approve in-lieu lots for full-time residential use.

3. Issue recreation residence term permits for a maximum of 20 years in accordance with procedures in FSM 2721.23e and FSH 2709.11, sec. 41.23.

4. Give holders at least 10 years written advance notice if a new permit will not be issued following expiration of the existing permit term (FSM 2721.23a).

5. Revoke a recreation residence permit before expiration of the term of the permit when (a) it is in the public interest, particularly when the final decision authority does not rest with the Forest Service, (b) there is an uncorrected breach of a permit provision(s) (FSM 2721.23i), (c) the site has been rendered unsafe by catastrophic events such as flood, avalanche, or massive earth movement, or (d) when there is other cause as provided in 37 CFR 251.60. Revocation in the public interest should not be undertaken unless monies are available to pay for the holder's improvements and there is an urgent need to use the lot before the action can be considered through the Forest planning process resulting in a decision to convert to an alternative public use. When revoking a permit for any cause, give as much advance notice as possible (FSM 2721.23i).

6. Although provision of an in-lieu lot is not required, make a reasonable effort to provide a lot to holders whose lots will be converted to an alternative public use and who have received notification that new permits for those lots will not be issued or who have received revocation notices (except revocation for noncompliance) (FSM 2721.23e). For this purpose, in-lieu lots must be in nonconflicting locations in or adjacent to established tracts within the National Forest containing the residences, or in or adjacent to established tracts on adjacent National Forests. Appropriate lots for consideration are undeveloped, formerly developed, and withdrawn lots in or adjacent to established recreation residence tracts and which are not needed in the foreseeable future for other public uses. Lots that are vacant because of noncompliance or other factors also may be considered as in-lieu lots. In-lieu lots should be comparable to the lots being converted to an alternative public use when possible, but authorized officials should advise holders that the Agency cannot guarantee that the available in-lieu lots will be entirely comparable. Do not establish new recreation residence tracts for in-lieu lot purposes. Offer in-lieu lots in accordance with the procedures in FSH 2709.11, sec. 41.23c.

2347.11—Preventing Unauthorized Residential Use. Prevent unauthorized full-time residential use by enforcing the terms of the special use permit. Continue to administer those recreation residences presently authorized as a principal place of residence in accordance with provisions of the special use permit. Upon transfer or sale of improvements, discontinue the residential use and authorize only recreation residence use.

2347.12—Caretaker Residences.

2347.12a—Authority. Authorize caretaker use of a recreation residence with an annual permit, Form 2700–4, under the Act of June 4, 1897. (Require applicants who currently have term permits to exchange them as a condition of obtaining the caretaker authorization.)

2347.12b—Caretaker Residence Use. The need for a caretaker residence rarely can be justified where yearlong occupancy is already authorized in the tract. The Forest Supervisor may authorize a caretaker residence in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract and alternative security measures are not feasible or reasonably available. The fees for caretaker residences shall be 25 percent more than those charged for recreation residence use of a similar lot in the tract. A tract association may own caretaker residences.

1. Authorize no more than one caretaker residence per recreation residence tract unless factors such as size and layout of the tract call for more than one. The affected tract association, or if there is no association, at least 60 percent of the affected holders, must document approval of request for a caretaker residence. Require the applicants for caretaker use to document the caretaker services they will provide.

2. Do not authorize construction of a new residence for caretaker services. Issue the annual permit only for an existing residence. The permit must contain a provision that automatically terminates authorization for yearlong use in case of change in ownership.

3. Coordinate applications for caretaker residence permits with local governmental agencies to avoid creating unreasonable demands or burdens for such services as snow plowing, mail delivery, garbage pickup, school bus, or emergency services.

4. If a lot ceases to be used as a caretaker residence, issue a new term permit for recreation residence use to the holder, if qualified, or to the purchaser of the improvements.

Forest Service Manual

Chapter 2720—Special Uses Administration

2721.23—Recreation Residence. the term "recreation residence" includes only those residences that occupy planned, approved tracts or those groups established for recreation residence use. See FSM 2347 for basic policy on recreation residence use.

2721.23a—Administration. The following direction relates specifically to issuance and administration of special use permits for recreation residences. For recreation residence permits in Alaska, follow the additional requirements in section 1303(d) of the Alaska National Interest Lands Conservation Act. Administer recreation residence permits in accordance with the direction in sections 2721.23a–2721.23i and within the broad policy governing recreation residences and permitted uses set forth in FSM 2347.1 and 36 CFR 251.50.

1. Issue special use permits for recreation residence use in the name of

one individual or to a husband and wife. Upon issuance of a new permit that continues the use or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.

2. Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).

3. Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.

4. To the extent possible, issue all recreation residence permits in a tract, or in logical groups of tracts, with the same expiration date.

5. To help defray costs and provide additional recreation opportunities, a holder may obtain permission for incidental rental for specific periods. Ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature. Rental arrangements must be in writing and approved in advance by the authorized officer. The holder must remain responsible for compliance with the special use authorization.

6. Allow no more than one dwelling per lot to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single lot, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife and dependent children).

7. When a recreation residence is included in the settlement of an estate, issue a new special use permit for the remainder of the original permit term, updated to reflect policy and procedural changes, to the properly determined heir, if eligible. Prior to estate settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer for the remainder of the original permit term, updated to reflect policy and procedural changes, if eligible.

8. Specify in the permit that the recreation residence must be occupied at least 15 days annually, the minimum acceptable period of occupancy.

9. Issue recreation residence term permits for a maximum of 20 years, except when the need for a shorter term has been determined by a project analysis in accordance with FSM 2721.23e and FSH 2709.11, chapter 40.

10. When a decision is made to convert the lot to an alternative use (2721.23e), take the following actions:

a. Notify the holder of the reasons and provide a copy of the decision documentation.

b. Allow at least 10 years of continued occupancy after notification.

c. Allow the current term permit to expire under its own terms and if the holder is entitled to additional time to satisfy the 10-year notification period, issue a new term permit for the remaining period. Clearly specify any limited tenure by including the following statement in the permit:

"This permit will expire on (insert date) and a new permit will not be issued."

d. Issue term or annual permits for additional periods as needed to allow continuation of occupancy until conversion to the alternate public use is ready to begin.

11. Before the Forest Supervisor issues a decision to convert a lot to an alternative public use, submit the proposed decision, supporting documentation and summary of public comments, to the Regional Forester for review for adequacy of the documentation and analysis. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed decision prior to making the final decision.

12. As with any resource allocation made in a Forest plan, the Forest Supervisor may reconsider a decision to continue or convert recreation residence lots to an alternative public use at any time new or changed conditions merit such reconsideration.

13. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct and document an environmental analysis to determine whether improvements on the lot can be safely occupied in the future under Federal and State law before issuing a permit to rebuild or terminating the permit. Normally, an analysis should be completed within 6 months of such an event.

Allow rebuilding if the lot can be occupied safely and the use remains consistent with the Forest Land and Resource Management Plan. If the need for an alternative public use at the same location has been established prior to the catastrophic event, do not allow rebuilding if the improvements are more than 50 percent destroyed. If rebuilding is not authorized, in-lieu lots may be offered as provided by FSM 2347.1, paragraph 6 and FSH 2709.11, section 41.23c.

14. At the time permits are issued, advise holders that the terms of the permit require that they notify the Forest Service if they intend to sell their improvements and that they must provide a copy of the permit to a prospective purchaser before finalizing a sale. Whenever possible, the authorized officer should advise a prospective purchaser of the terms and conditions of the permit before a sale is final.

15. Do not stay a fee increase pending completion of an appeal of the fee under the administrative appeal regulations. Make any adjustments resulting from the administrative review through credit, refund, or supplemental billing.

16. During the term of a permit, terminate or revoke the use only in accordance with regulations at 36 CFR 251.60 and the terms and conditions of the permit (FSM 2347.1, para. 5). Except for revocation for noncompliance of terms of the permit, the Forest Supervisor shall submit proposed revocations, with supporting documentation and a summary of the public comments, to the Regional Forester for review prior to the Forest Supervisor's issuance of a decision. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed revocation prior to making the final decision.

2721.23b—*Applications.* Insofar as practicable, notify a new or prospective owner of the requirement to make application for the authorization to use existing improvements in accordance with 36 CFR 251.54.

2721.23c—Permit Preparation.

1. Use the Term Special Use Permit for Recreation Residence (Form FS 2700–5a, FSH 2709.11, ch. 50), to authorize recreation residences, except as specified in paragraph 2 of this section.

2. Use the Special Use Permit (Form FS–2700–4) when:

a. Conversion of the lot to a alternative public use is authorized, the conversion will be delayed, and a minimum term of continued use cannot be predicted.

b. Continuance of the recreation residence use is conditioned on the owner complying with specific Forest Service requirements before a term permit is issued.

c. The improvements are managed by a third party pending settlement of an estate, bankruptcy proceedings, or other legal action.

d. Yearlong occupancy is authorized by the Forest Supervisor, at which time the improvement ceases to be a recreation residence.

3. In either permit, identify all authorized improvements associated with recreation residence use. Do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate special use permit (Form FS–2700–4).

2721.23d—Fee Determination. (FSH 2709.11, ch. 30.).

1. Use fair market value as determined by appraisal in determining the base annual rental fees for recreation residence lots. Redetermine the base fee at 20-year intervals.

2. Adjust the fee annually by the annual (second quarter to second quarter) change in the Implicit Price Deflator-Gross National Product (IPD–GNP).

3. Use professional appraisal standards in appraising recreation residence lots for fee determination purposes (FSH 2709.11.)

4. Where practicable, contract with private fee appraisers to perform the appraisal.

5. Require appraisers to coordinate the assignment closely with affected holders by seeking advice, cooperation, and information from the holders and local holder associations.

6. Retain only qualified appraisers. To the extent practicable, use those appraisers most knowledgeable of market conditions within the local area.

7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

Forest Service Handbook 2709.11—Special Uses

Chapter 30—Fee Determination

33—Recreation Residence Fees

33.1—Base Fees and Indexing. Follow these procedures in determining the base (beginning) fee and subsequent fees under a 20-year cycle.

1. As the initial base, use the fees established in one of the years between 1978 and 1982. The first year of the fee cycle is the first year of the established fee (disregarding any phase-in that may have been provided). Adjust the full base fee forward by applying the appropriate cumulative Implicit Price Deflator-Gross National Product (IPD–GNP) adjustment factor shown in exhibit 01. New fees for 1989, established in this manner, will be phased-in over a 4-year period (1989–1992) at the rate of one-fourth of the increase each year, except that fees will not be phased-in for those permits that limit fee adjustments to 5-year intervals.

In those cases where there may not be a fee established for the 1978–1982 period, Regional Foresters are authorized, subject to concurrence of the Chief, to utilize a different starting date and to adjust the length of the fee cycle so that all permits will have a new base fee determined during the 1998–2002 period.

2. For 1990 through the last year of the fee cycle, adjust the fees on an annual basis by calculating the percentage change of the IPD–GNP index (as reported by the Bureau of Economic Analysis, Department of Commerce, in July of each year) from the second quarter of the previous year to the second quarter of the current year and applying this percentage adjustment factor to the current year's fees.

For term permits that restrict adjustments to 5-year intervals, apply the IPD index adjustments cumulatively at 5-year intervals. At the end of the current 20-year term, or earlier if agreed to by the holder, revise permits to provide for annual indexing.

3. Limit the annual fee adjustment for 1990 and thereafter to 10 percent per year when the change in the IPD–GNP index exceeds 10 percent in any one year. The index amount in excess of 10 percent will be carried over and applied to the fee for the next succeeding year in which the index factor is less than 10 percent.

4. If a new permit is to be issued (FSM 2721.23a), re-appraise the lot toward the end of the 20-year cycle. Beginning in the twenty-first year (the first year of the next fee cycle; 1998 in the case of 1978 fees), put into effect the base fee for the next 20-year cycle by applying 5 percent to the newly determined appraised market value of the lot for recreation residence purposes.

5. In those few cases where one or more additional sleeping structures (guest cabins, and so forth) have been added to a single lot, add to the current adjusted base fee an additional charge equal to 25 percent of the fee established for a single residence use of the lot or $100, whichever is greater, per structure.

EXHIBIT 01, SEC. 33.1—IPD–GNP ADJUSTMENT FACTOR BY YEAR

Base fee year	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Cum. adj.
1978	1.101	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.771
1979	.....	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.609
1980	.....	.....	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.473
1981	.....	.....	.....	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.346
1982	.....	.....	.....	.....	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.261

(Note: Cum. Adj.=Cumulative Adjustment.)

The above factors for fee years 1979–1986 were taken from Table 5, Price Indexes and the Gross National Product Implicit Price Deflator, as published in the Survey of Current Business by the Department of Commerce, Bureau of Economic Analysis, February 1986. These factors represent an annual rate, based on the percent change from the first quarter to the second quarter of the indicated year. The 1987 factor of 1.026 is the percentage change in the IPD–GNP index from the second quarter of 1985 to the second quarter of 1986 as reported in the July 1986 issue of "United States Department of Commerce News," a publication by the Bureau of Economic Analysis. The IPD–GNP index for the second quarter of 1985 is 111.1. The 1988 and 1989 factors, were determined following the same procedures, using the appropriate year's publication. The factors for 1979–1989 in Exhibit 01 are shown only to illustrate how the cumulative adjustment factor used to establish the 1989 fee is determined. The factor was

determined by chain multiplying the factor for the years within the base fee year period (for 1982 this would be 1.050 × 1.032 × 1.038 × 1.033 × 1.026 × 1.028 × 1.029 = 1.261.) See exhibit 02 for examples of applications.

Exhibit 02, Sec. 33.1—Examples of Use of IPD–GNP Table

The following two examples illustrate use of the IPD–GNP adjustment factors in exhibit 01 in determining the 1989 fee:

(1) Example 1. A fee of $412 that became established in 1982 (first year in the fee cycle) would be adjusted to $520 in 1989 ($412 × 1.261). This would be the fee amount owed by a holder who does not accept the new term permit and would remain constant until the end of the five year adjustment period. If a new term permit is accepted, the fee would be phased-in, and the holder would be charged $439 for 1989, instead of the full amount.

(2) Example 2. A 1980 base year fee of $315 would be adjusted to $464 ($315 × 1.473) with the actual 1989 charge limited to $352 for a new term permit. A holder who keeps the old permit would pay the full fee of $464 in 1989.

Under both examples, factors for the years 1990 and thereafter will be determined in the same manner as the 1989 factor. Using the 1989 factor as an example, the index for the second quarter of 1987 as reported in the July 1987 Bureau publication is 117.2; the index for February 1988 in the July 1988 Bureau publication is 120.6. The percentage change in the index to be used to determine 1989 fees is 120.6 minus 117.2 divided by 117.2. Thus, 1989 fees will be 2.9 percent higher than 1988 for those permits that are indexed.

Using the above two examples, calculation of the 1990 fees for those accepting new term permits would be as follows: (A 1990 IPD–GNP adjustment factor of 1.028 is assumed.)

(1) Example 1. The full 1989 fee of $520 times the IPD–GNP index factor for 1990 of 1.028 equals $535, the full fee for 1990. The increase in the fee is $15. The amount of the 1989 fee increase to be phased-in in 1990 is $54 ($520 − $412 = $108/2 = $54). Thus, the 1990 fee to be charged is the base 1982 fee of $412 + $54 + $15 = $484.

(2) Example 2. The full 1990 fee equals $477, a fee increase of $13. The amount of the 1989 fee increase to be phased-in in 1990 is $75 ($464 − $315 = $149/2 = $75). Thus, the 1990 fee to be charged is the base 1980 fee of $315 + $75 + $13 = $403.

33.11—Fee Credits. In billing holders for fees, reduce the fee by the amount of any unused or remaining credits due holders under provisions of the Appropriations Acts for fiscal years 1983 through 1986.

33.2—Fees on Nonrenewal. When permits are placed on tenure (that is, a new special use permit will not be issued following expiration), the annual fee for the tenth year prior to the expiration date of the current permit becomes the base fee. The fee for each year during the last ten years is one-tenth of the base fee multiplied by the number of years then remaining on the permit. For example, charge a holder with nine years remaining 90 percent of the base fee; with eight years, 80 percent; and so forth.

Use the following schedule to calculate the holder's fee during the 10-year period:

Years remaining on current permit	Percent of base fee to charge
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

When a review of the decision to convert the lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence, use the following fee determination procedures:

1. If a new 20-year term permit is issued, the Forest Service shall recover the amount of fees foregone while the previous permit was under notice that the lot would be converted to an alternative public use. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the lot and shall be charged to a subsequent purchaser.

The annual fee under the newly issued 20-year permit shall be the annual index adjusted fee computed as though no limit on tenure existed, plus the amount specified above until paid in full.

2. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for less than 10 years (that is, authorized by a new permit for a specified term), do not recover past fees. Determine the fee for a new permit of less than 10 years by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension (that is, a 6-year tenure period results in a fee equal to 60 percent of the base fee).

3. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for more than 10 years (authorized by a new permit for a term of less than 20 years), the Forest Service shall recover fees as outlined in preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

33.3—Appraisals. Use the following process to determine the fair market value of recreation residence lots.

1. Use appraisals made by professional appraisers for determining the market value of the fee simple estate of the National Forest land underlying the lot subject to a special use permit, but without consideration as to how the authorization would or could affect the fee title of the lot (FSH 5409.12, ch. 6 for the standard contract to be used to establish fair market value of recreation residence lots).

2. In consultation with affected holders, select and appraise typical lots (rather than all individual lots) within groups that have essentially the same or similar value characteristics. Within such groupings, adjust for measurable differences between the lots. (Once properly established, typical site classifications should rarely change.)

3. Ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject lots' characteristics. Such characteristics include:

a. Physical differences between subject lot and the comparable sales.

b. Legal constraints imposed upon the market by governmental agencies.

c. Economic considerations evident in the local market.

d. Locational considerations of subject lot in relation to the market (sales) comparable.

e. Functional usability and utility of the lot.

f. Amenities occurring to the lot as compared with selected sales comparables.

g. Availability of improvements (such as roads, water systems, and power lines) provided by nonholder entities, including the United States. Do not adjust for improvements furnished by holders.

h. Other market forces and factors identified as having a quantifiable effect upon value.

33.31—Appraisers.

1. Select fee appraisers who hold a current certification of competence from

a nationally recognized professional appraisal organization. In the case of Forest Service appraisers, use those individuals who have received adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence.

2. Require appraisers to sign a standard agreement that states:

a. The approved appraisal format to be used.

b. The approved standard forms to be used.

c. A full, complete, and accurate definition of the appraisal problem.

d. The standards of professional competence, ethics, and practice to which the appraiser shall adhere.

e. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal regulations, (3) Forest Service policies and procedures, and (4) situations unique to the given appraisal assignment.

3. Require appraisers to notify affected holders by mail and offer to meet with them to discuss the assignment, answer questions specific to the assignment, and seek advice, information, and cooperation from the holders and their local organizations. The appraiser must notify holders of such a meeting at least 30 days in advance of the meeting. Send notices to the address used for bills for collection. Use the notice to give the holders advance information on the appraisal assignment. At such meetings, require that the appraiser have available copies of the appraisal instructions, directions, and requirements for review by the holders. An appraisal cannot be made prior to the meeting with the holders.

33.32—Establishing Recreation Residence Lot Value.

1. Upon receipt of the appraisal report, conduct a review of the appraisal in conformance with the standards of the National Association of Review Appraisers.

2. Following review and acceptance of the appraisal, notify affected holders of Forest Service acceptance of the report. In the notification, inform holders that they and other interested parties have 45 days in which to review the appraisal. Upon request, provide copies of the report(s) and supporting documentation pursuant to the Freedom of Information Act.

3. Upon request, provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service.

a. The Forest Service shall provide holders with a copy of the standards used by the appraiser selected by the Forest Service and holders shall provide the standards to the holder-employed appraiser. The holder must require the observance of these standards, including a signed certification that ensures an understanding of the appraisal instructions and standards. Reject any appraisals that do not meet these standards.

b. Subject the holder-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service.

4. Give full and complete consideration to both appraisals. If the two appraisals disagree in value by more than 10 percent, ask the two appraisers to try and reconcile or reduce their differences. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor.

5. When requested, seek a third appraisal.

a. The cost shall be shared equally by the holder and the Forest Service.

b. This appraisal must meet the same standards of the first and second appraisals. The Forest Supervisor has discretion to accept or reject the third appraisal.

Forest Service Manual

Chapter 2720—Special Uses Administration

2721.23e—Recreation Residence Continuance. See FSM 2347.1 for the general policy on recreation residence use. Follow the direction in this section and the procedures in section 41.23, FSH 2709.11 in determining whether recreation residence term permits may be issued for a new term at current sites. Exhibit 01, section 41.23c, FSH 2709.11, depicts the permit continuance process.

The Land and Resource Management Plan (Forest plan) provides direction for continuance of the recreation residence use (FSM 1920). As Forest plans are revised, availability for recreation residence use shall be explicitly addressed in the plan through delineation of management areas and associated management area prescriptions (FSM 1920).

Decisions to issue new recreation residence term permits following expiration of the current term permit require a determination of consistency with the current Forest plan. Make this determination by evaluating the extent to which continued recreation residence use adheres to the standards and guidelines which apply to the appropriate management area. Address continuation of recreation residence use on a tract or group of tracts basis, not on individual lots.

1. Use Is Consistent With Forest Plan. When recreation residence use is consistent with the Forest plan, it shall continue. If the use has been analyzed sufficiently as part of a EA or EIS completed within the 5 years prior to permit expiration, issue a new term permit upon expiration of the current term permit. Issue a record of decision or a decision notice and finding of no significant impact only if the use was not specifically approved in the appropriate decision document. If the use has changed and such change has not been analyzed sufficiently as part of a completed EA or EIS, complete the appropriate environmental analysis (FSH 1909.15). If the EA or EIS indicating the use is consistent with the Forest Plan was completed more than 5 years prior to permit expiration, additional environmental documentation is necessary (FSH 1909.15, sec. 18.03). Initiate action to issue a new term permit within 2 years prior to permit expiration.

2. Use May Not Be Consistent With Forest Plan. When the lands currently authorized for recreation residence use are allocated to alternative public uses through amendment or revision of the Forest Plan, and continued recreation residence use may be inconsistent with standards and guidelines which apply to the appropriate management area, the Forest Supervisor shall conduct a project analysis of the alternative public use(s) (FSH 1909.15). This project analysis shall consider continuation of existing recreation residence use through appropriate modification of the term permit provisions or amendment of the Forest plan to accommodate the use, or discontinuation of the use (See FSM 2347.1 for recreation residence use continuance). Decisions reached by the project analysis must comply with NEPA requirements and are subject to appeal under Department of Agriculture appeal regulations at 36 CFR part 215 and 36 CFR part 251, subpart C.

a. If the project analysis results in a decision to amend the Forest plan so that the recreation residence use may continue, modify the provisions of the current term permits as appropriate. New term permits can be issued following current permit expiration. Additional environmental documentation may be necessary (FSH 1909.15).

b. If the project analysis results in a decision to convert a lot to an alternative public use at some point in

the future, grant the holder at least 10 years continued use from the date of the decision, unless the continued use conflicts with law and regulation, and identify the specific alternative public use(s) for which the land is being recovered. As provided by FSM 2347.1, the authorized officer may allow continued use of the lot until such time as conversion of the new use is ready to begin by issuing a new permit for the remaining period and amending the Forest plan if needed.

c. Review the project analysis decision two years prior to permit expiration to determine if there have been any changes in resource conditions that require another look at the decision. If the decision was made less than 5 years prior to permit expiration and the review shows that conditions have not changed, implement the project analysis-based decision. Affirmation of such decision is not appealable (36 CFR 251.83). If the decision was made more than 5 years from permit expiration and/or review indicates that resource conditions have changed, update the analysis to determine the proper action. Decisions arising from this new analysis are appealable.

2721.23f—In-Lieu Lots. When new permits will not be issued following expiration of the present permit, make a reasonable effort to provide an in-lieu lot, if available, at locations not needed in the foreseeable future (generally, the period covered by the Forest plan) for alternative public uses in accordance with FSM 2347.1, paragraph 6 and FSH 2709.11, section 41.23d.

2721.23g—Land Exchange. Proposals to convey recreation residence tracts into private ownership by land exchange may be considered at any time. Such proposals must be processed in accordance with the instructions in FSM 5430 applicable to all land exchanges.

2721.23h—Cooperation and Issue Resolution. Authorized officers shall strive to reduce conflict between holders and the Forest Service arising from permit administration. As necessary, specify a Forest Officer to work with the holders, their representatives, and other interested parties on specific issues.

1. Provide opportunity for holders and their representatives to participate in issue resolution. Where practicable, except where an imminent hazard or risk to health and safety or resources requires immediate action prior to issuing written decisions related to permit administration, consult and meet in person, or by telephone, with holders and their representatives to discuss any issues or concerns related to the permit and to reach a common understanding and agreement.

2. During Forest plan amendment or revision and project analysis, seek full involvement of holders and their representatives in public involvement opportunities and activities. Encourage and solicit their input and comments. Meet with holders and their representatives to discuss any issues or concerns arising in the planning and analysis processes and explore opportunities to resolve those issues prior to issuing a decision.

3. If a decision is appealed, utilize the opportunities provided in the appeal rules (36 CFR part 215, part 217 and part 251, subpart C) to discuss the appeal with the appellant(s) and intervenor(s) (and/or their representatives) together or separately to explore opportunities to resolve the issue by means other than review and decision on the appeal.

2721. 23i—Noncompliance. Give written notice and provide a reasonable opportunity for holder to correct special use permit violations before terminating the use for noncompliance with the permit conditions (36 CFR 251.60(e)). Revocation for noncompliance shall be only for a breach of a permit provision(s) that continues after notice and a reasonable opportunity for correction has been given (FSM 2347.1, para. 5).

2721.23j—Lot Restoration. On expiration of a permit which will not be reissued or revocation or termination prior to expiration (FSM 2721.23a(10), 2721.23a(16)), except for revocation in the public interest, require the holder to restore the property to a condition acceptable to the Forest Supervisor (36 CFR 251.60(j)). The holder may relinquish the improvements to the Forest Service upon approval of the Forest Supervisor. Terms and conditions for lot restoration are given in the term permit issued for recreation residences.

Forest Service Handbook 2709.11—Special Uses

Chapter 40—Special Uses Administration

41.23—Recreation Residence Use.

41.23a—Permit Continuance. When a Forest plan is amended or revised and recreation residence use remains consistent with management direction given in the Forest plan, issue a new permit to the same holder in accordance with the following:

1. Since recreation residences have been in place for many years, and experience in administering this use has shown that continuing the use does not cause significant environmental impacts, issuance of a new permit can be made without further environmental documentation (FSM 2721.23e), except when the following situations are present:

a. If the use has been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration, but not specifically addressed in a decision document, confirm the consistency of the use with the management direction in the Forest plan by issuing a record of decision or a decision notice and finding of no significant impact.

b. If the use has not been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration, complete the appropriate environmental analysis and documentation (FSH 1909.15).

c. If an EA or EIS indicating the use is consistent with the Forest plan was completed more than 5 years prior to permit expiration, additional environmental documentation may be necessary (FSH 1909.15).

d. If there are changes in the use and the changed use has been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration and approved in the appropriate decision document no further action is required. If the changed use has not been analyzed sufficiently as part of a completed EA or EIS and approved in the appropriate decision document, environmental documentation may be necessary. Such documentation may be accomplished by categorical exclusion (FSH 1909.15).

2. Initiate the analysis and action to issue a new permit 2 years prior to expiration of the current term permit and notify the holder of the outcome of the action.

3. Ensure the current use is in full compliance with the terms of the permit before issuing the new term permit.

4. Review and update the term permit provisions to ensure that the new permit contains those clauses necessary to comply with all current regulations of the Secretary of Agriculture and all present Federal, State, or county laws, regulations, or ordinances which are applicable to the area covered by the permit.

41.23b—*Project Analysis.* When a Forest plan is amended or revised and consistency of the existing recreation residence use with new Forest plan management direction is uncertain, conduct a site specific project analysis to verify the new direction. Recognize that an inconsistency indicated by the Forest plan is not tantamount to recreation residence removal.

Recreation residence use may continue by appropriate modification of the term permit provisions to recognize specific occupancy conditions, or by amendment of the Forest plan to accommodate the use (FSM 2721.23e.1.b).

1. Public Involvement. During the project analysis process, encourage and solicit information, comments, and involvement from holders and other interested parties. Follow Forest Service public involvement procedures, including those associated with NEPA (FSM 1620, FSH 1900.12, and FSH 1909.15). Facilitate holder involvement by timing review periods as closely as possible to the recreation residence use season.

2. Analysis Documentation. The project analysis record and appropriate NEPA compliance document must contain objective, detailed information regarding existing recreation residence use and other applicable resource conditions. The documentation must include a full range of alternatives that includes consideration for retention of some or all of the existing recreation residence use.

3. Analysis Factors and Considerations.

a. Lot use. Examine the relationship of the existing recreation residence use with the proposed alternative public use of the lot, including compatibility and conflict. Describe any current or anticipated conflicts between recreation residence use and the proposed use. Examine and describe the feasibility of other sites to meet the proposed use or how the proposed use could be provided for by modifying recreation residence use or by modifying the proposed use.

Develop a range of alternatives that:

(1) If possible, examine and describe ways to meet the proposed use without significant conflict with existing recreation residence uses and how potential conflicts can or cannot be mitigated.

(2) Examine the feasibility of common, shared, or multiple use that includes recreation residences. Also examine the feasibility of adjusting lot and tract sizes, configurations and boundaries, or relocation of lot improvements to better accommodate such use.

(3) Examine the feasibility of alternative sites for recreation residence use and for the proposed use.

(4) Compare the benefits and disadvantages of the proposed use with the benefits and disadvantages of continued recreation residence use, including economic considerations, such as the cost of removing the use.

(5) Examine the feasibility of using land exchanges to accommodate recreation residence and/or the proposed use.

B. Other Resource Impacts. Show how recreation residence occupancy is compatible or in conflict with other National Forest System resources. Consider the applicability of section 106 of the National Historic Preservation Act and other Federal and State laws which may have an effect on these resources.

c. Environmental Impacts. Discuss the environmental impacts of continued recreation residence use, together with the impacts of any improvements necessary for their continued use, compared with the impacts of the proposed use. Examine the environmental, economic, and social impacts of recreation residence use, the proposed use, and alternative public uses, particularly any necessary construction.

4. Decision Issuance and Documentation.

a. If the project analysis results in a finding that continued recreation residence use will not conflict with the proposed alternative public use, issue a decision to amend the Forest plan, and modify existing permits as appropriate. Issue new term permits for the applicable lots following permit expiration. The decision document shall summarize the conclusions regarding recreation residence use and provide a basis for the issuance of new permits.

b. If the project analysis results in a finding that (1) the recreation residence use is in some degree inconsistent with the Forest plan but that continued use does not conflict with the proposed alternative public use, or (2) that the proposed use can accommodate some or all of the recreation residence use, issue a decision to amend the Forest plan and modify existing permits as appropriate. Issue new term permits for the applicable lots following permit expiration. The decision document shall summarize the conclusions regarding continued recreation residence use and delineate, as appropriate, which permits will not be continued and which will receive new term permits.

c. If the project analysis results in a finding that recreation residence use remains inconsistent with the Forest plan and is not compatible with the proposed use, issue a decision that the recreation residences lots are to be removed and the lots converted to the proposed use.

d. In addition to other requirements specified in FSH 1909.15, the decision document shall include the following:

(1) The estimated time of conversion.

(2) The reasons the recreation residence use is or is not compatible with the proposed use.

(3) The reasons why the proposed use was chosen over others.

(4) A summary of alternatives to the conversion, including the possibility of combining or sharing use with recreation residence use; adjusting lots or locations of improvements to better accommodate common or shared uses; and alternatives suggested by affected holders and other interested members of the public.

(5) The reasons any conflict between the recreation residences and the proposed use cannot be resolved.

(6) Cost effectiveness of the proposed use.

5. Decision Notification.

a. Notify holders and any interested parties of the decision and provide copies of the project analysis, NEPA documentation, any Forest plan amendment, and decision document as soon as possible after the decision along with notice of appeal rights under 36 CFR part 217 or part 251, subpart C.

b. When lots will be converted to the proposed use and new permits will not be issued upon expiration of the present permits, provide with the decision notification:

(1) Ten years or more notice that the lots will be converted to the proposed use (FSM 2721.23a). Normally, use the same conversion date for all affected holders in a particular group or tract.

(2) Notice that the holder should refrain from making costly repairs, improvements, or expenditures except those that are necessary to protect holder and public health or safety.

(3) Notice of whether in-lieu lots will or will not be made available, although the location of those in-lieu lots may not be known until permit expiration approaches.

(4) Notice that fees will be adjusted in accordance with FSH 2709.11, section 33.2.

6. Project Analysis Decision Review. Two years prior to permit expiration (usually the 18th permit year), Forest Supervisors shall review project analysis decisions affecting those permits that are more than five years old to determine if there have been any changes in resource conditions that require reconsideration of the decision.

For all reviews, the following apply:

a. Reviews shall be objective, comprehensive, and in writing. New information, changed resource conditions, and new or changed land allocations made through the forest planning process shall be reviewed to determine if a new project analysis and/

or additional NEPA compliance is needed.

b. When initiating the review, notify affected holders and interested publics in writing and provide opportunity for involvement in accordance with Forest Service public involvement procedures.

c. If review indicates that conditions have not changed, implement the decision.

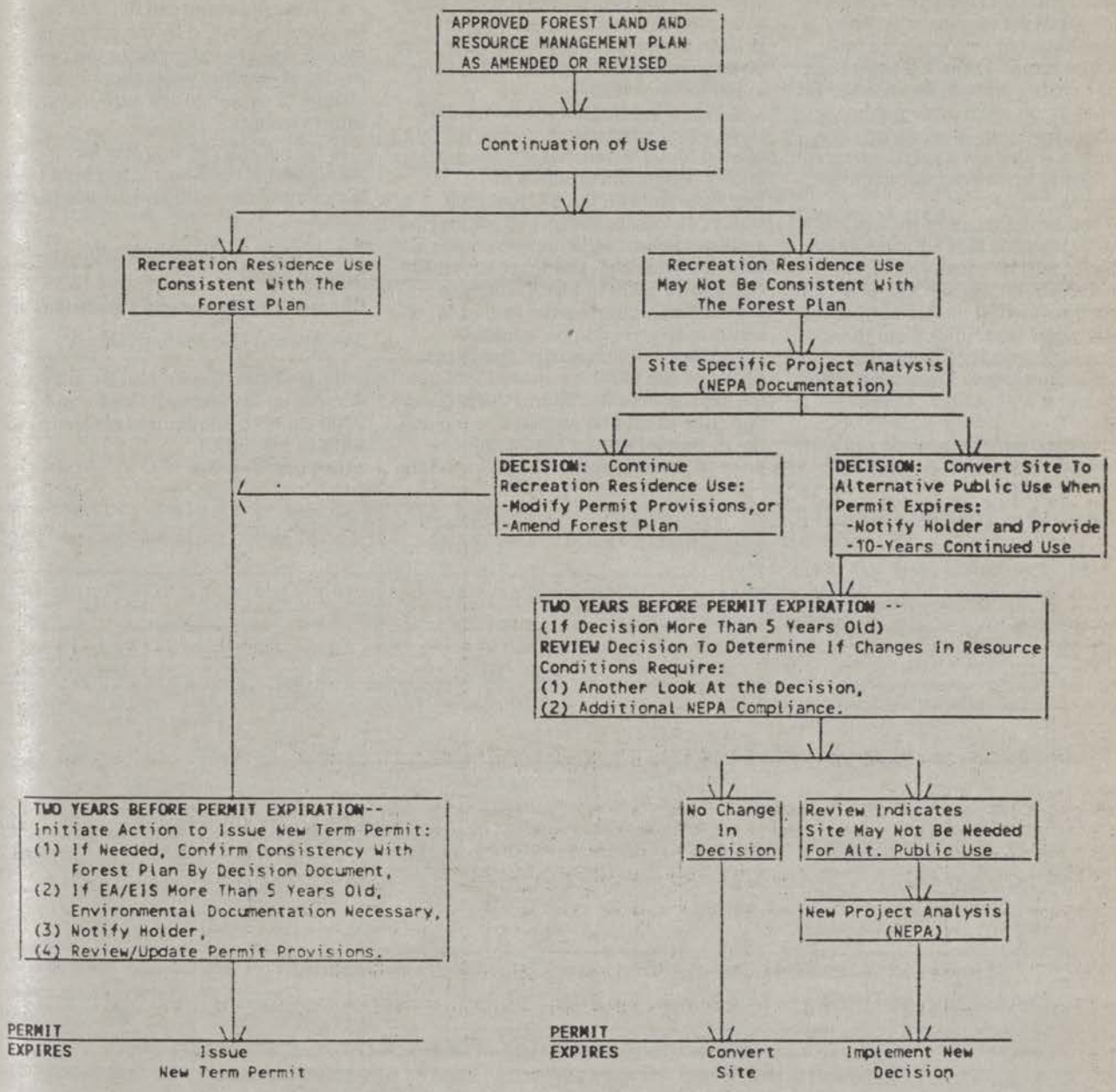
d. If review indicates that conditions have changed, initiate a new project analysis, including NEPA compliance, to determine future use of the lot(s).

e. Notify affected holders and interested publics in writing of review findings, including notice that the result of the review is not appealable (36 CFR 251.83).

41.23c—Permit Decision Process. Exhibit 01 depicts the procedure to be followed in determining whether the recreation residence authorization should be continued.

BILLING CODE 3410–11–M

EXHIBIT 01, SEC. 41.23c - PERMIT DECISION PROCESS



BILLING CODE 3410-11-C

41.23d—In-Lieu Lots. Pursuant to FSM 2347.1, paragraph 6, in-lieu lots may be offered to holders who have received notice that their permits are being revoked for reasons other than noncompliance or that a new permit will not be issued following expiration of their existing permits because the lot is needed for an alternative public use. Identify and offer in-lieu lots in accordance with FSM 2347.1, paragraph 6 and FSM 2721.23f and follow these procedures:

1. When available, offer in-lieu lots to holders at the time that notice is given that the lot will be converted to an alternative public use and a new permit will not be issued. If lots do not become available until later, offer them then.

2. Give first priority to identifying and offering in-lieu lots in the same tract or an expansion of that tract, where feasible.

3. Arrange a joint inspection of the in-lieu lot with the holder. Allow the holders 90 days from the date of the joint inspection of the in-lieu lot or 90 days from the final disposition of any appeals of the decision to convert the lot to an alternative public use, whichever is later, to accept or reject the offer. The 90-day period shall occur while access to the lot is possible.

4. When holders accept such offers, issue a new permit and reserve the offered lots. Do not charge a fee until the holder begins construction of improvements on the lot. A partial waiver of fees for the in-lieu lot may be appropriate until the improvements are actually occupied. The lot reservation will expire upon holder's failure to begin construction on the in-lieu lot on a mutually-agreed upon schedule.

5. Allow holders accepting offers to continue use of their current lots until the expiration date. Inform the holders that they should be prepared to move to the in-lieu lot during the 24 months prior to permit expiration, provided the supplemental review of the decision to convert the present lot to an alternative public use has been completed.

6. The opportunity to develop an in-lieu lot, if accepted by the previous owner, shall be extended to the new owner, if eligible, when there is a change in ownership of authorized improvements.

7. Do not offer in-lieu lots for revocation actions stemming from noncompliance with special use permit terms.

Forest Service Handbook 2709.11—Special Uses

Chapter 50—Terms and Conditions

54—Special Use Authorizations

54.1—Term Special Use Permit for Recreation Residences. Use Form FS-2700-5a with all required clauses as set forth in exhibit 01.

BILLING CODE 3410-11-M

EXHIBIT 01, SEC. 54.1--TERM SPECIAL USE PERMIT

FS-2700-5a (01/94)
OMB No. 0596-0082
Expires 06/30/96

USDA - Forest Service	Holder No.	Type Site	Authority
	* /	*	*
TERM SPECIAL USE PERMIT For Recreation Residences	Auth. Type	Issue Date	Expir. Date
	*	* / /	* / /
	Location Sequence No.		Stat. Ref.
Act of March 4, 1915, As Amended (Ref. FSM 2710)	*		*
	Latitude	Longitude	LOS Case
	* - -	* - -	*

* _____ of * _____
(Holder Name) (Billing Address - 1)

* _____ * _____ * _____ * _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the * _____ National Forest, subject to the provisions of this permit including items * _____ through * _____, on page(s) * _____ through * _____. This permit covers * _____ acres.

Described as: (1) Lot * _____ of the * _____ tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) * _____ as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

*

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED: * _____ * _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED: * _____ * _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

BILLING CODE 3410-11-C

Note: Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italics.

Terms and Conditions

I. Authority And Use And Term Authorized

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and title 36, Code of Federal Regulations, sections 251.50–251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, chap. 10–50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. Termination at End of Term: This authorization will terminate on *_____. (insert date)

II. Operation and Maintenance

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

Note: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

III. Improvements

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: Signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. Responsibilities of Holder

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. Liabilities

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the

unauthorized cutting of timber in the State wherein the timber is located.

VI. Fees

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the *lot* will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in *_____ (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the *lot*.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the lot for recreation residence use.

Fees will be predicated on an appraisal of the lot as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD–GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD–GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD–GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States the total amount of fees forgone, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD–GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $*_____ per year and the fee is due and payable annually on *_____ (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM–6–8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 *et seq.*)

VII. Transfer, Sale, and Rental

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser

before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. Revocation

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time—not to exceed ninety (90) days—within which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b.) In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days' prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: *Provided,* That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.80) and the amount as determined on appeal shall be final and conclusive on the parties hereto: *Provided further.* That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. Issuance of a New Permit

A. Decisions to issue a new permit or convert the permitted area to an alternative public use upon termination of this permit require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan).

1. Where continued use is consistent with the Forest plan, the authorized officer shall issue a new permit, in accordance with applicable requirements for environmental documentation.

2. If, as a result of an amendment or revision of the Forest plan, the permitted area is within an area allocated to an alternative public use, the authorized officer shall conduct a site specific project analysis to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the lot for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the *lot* shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, when that decision and supporting environmental documentation is more than 5 years old. If this review indicates that the conditions resulting in the decision are unchanged, then the decision may be implemented. If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. Rights and Responsibilities Upon Revocation or Notification That a New Permit Will Not Be Issued Following Termination of This Permit

A. Removal of Improvements Upon Revocation or Notification That A New Permit Will Not Be Issued Following Termination Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or revocation for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the lot to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period—not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended—the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the lot.

B. In case of revocation or notification that a new permit will not be issued following termination of this permit,

except if revocation is for cause, the authorized officer may offer an in-lieu lot to the permit holder for building or relocation of improvements. Such lots will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or at nonconflicting locations in adjacent National Forests. Any in-lieu lot offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the revocation or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. Miscellaneous Provisions

A. This permit replaces a special use permit issued to: *_____ (Holder Name) on *_____ (Date), 19* __.

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0596–0082), Washington, DC 20503.

[FR Doc. 94–13323 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–11–M

federal register

Thursday
June 2, 1994

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701, et al.
Lands Eligible for Remining; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 785, 816, and 817

RIN 1029–AB74

Lands Eligible for Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend its existing regulations in light of recently enacted changes to Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992. The proposed rules are intended to provide incentives for the remining and reclamation of lands eligible for expenditures under section 402(g)(4) or 404 of SMCRA.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m., Eastern time, on August 1, 1994.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; and in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates and locations to be announced in the **Federal Register** prior to the hearings. OSM will accept requests for public hearings until 5 p.m., Eastern time, on June 23, 1994. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: The addresses and times for any hearings held will be announced prior to the hearings.

Requests for public hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Office of Surface Mining Reclamation and Enforcement, room 640 NC, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone: 202–343–1507.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments: Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

Public hearings: OSM will hold a public hearing on the proposed rule on request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5 p.m., Eastern time, on June 23, 1994. If no one has contacted Mr. Growitz to express an interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSM requests that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist OSM in preparing appropriate questions, OSM also requests, if possible, that each person who plans to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

II. Background

The House of Representatives Report from the Committee on Interior and Insular Affairs on the Comprehensive National Energy Policy Act of 1992 (*H.R. Rep.* 474, 102 Cong., 2d Session at 85 (1992)) contains the following statements: "The [coal remining] provisions of this section seek to make coal available that otherwise would be bypassed by providing incentives for industry to extract and reprocess, in an environmentally sound manner, coal that remains in abandoned mine lands and refuse piles. Current law reclamation performance standards were devised to address surface coal mining on undisturbed lands; the unintended result is to discourage remining. Remining also serves to mitigate the health, safety, and environmental threats posed to coalfield residents from abandoned mine lands by augmenting the work done under the Abandoned Mine Reclamation Program." These statements succinctly characterize a basic and long-standing conflict associated with remining.

On October 24, 1992, the President signed into law the Energy Policy Act of 1992, Public Law 102–486, section 2503, Coal Remining, which, in part, amended Sections 510, 515(b)(20), and 701 of SMCRA in order to provide the following initiatives to encourage remining in an environmentally-sound manner: 1. The revegetation success liability period for certain remining operations has been reduced to five years in the West and two years in the East; 2. Remined lands shall remain eligible for Title IV reclamation following bond release; and 3. The permittee of a remining operation shall not be subject to subsequent permit blocking under Section 510(c) of SMCRA for any violation resulting from an unanticipated event or condition occurring on the remining site. (Section 510(c) is implemented by 30 CFR 773.15.)

III. Discussion of Proposed Rules

A. Introduction

Regarding the above-mentioned remining amendments to SMCRA which are the subject of this rulemaking, OSM sought input from environmental groups, industry, and State regulatory authorities concerning the extent to which new regulations would need to expand or clarify statutory language in order to effectively implement Congressional intent. Comments received during this outreach have been considered in developing this proposal. Other provisions in section 2503 of the Energy Policy Act prescribe specific regulatory initiatives regarding the removal or on-site reprocessing of abandoned coal refuse sites. These initiatives will be implemented under a separate rulemaking.

B. Proposed Rules

1. 30 CFR Part 701—Permanent Regulatory Program

Section 701.5, Definitions, is proposed to be amended by adding two terms defined in section 2503(c) of the Energy Policy Act. *Lands eligible for remining* would be defined as in the Energy Policy Act by reference to sections 404 and 402(g)(4) of the SMCRA. Thus, the following sites would be included under this definition: sites that were mined for coal or affected by mining activities and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws; coal sites in each State abandoned after August 3, 1977, but before the State received primacy under SMCRA and for which available bond is insufficient to provide for adequate reclamation; or coal sites where mining was completed between August 4, 1977, and November 5, 1990, and which remain unreclaimed due to the insolvency of a surety company occurring during that same period.

Unanticipated event or condition is proposes to be defined consistent with the definition contained in the Energy Policy Act to mean an event or condition at an operation on lands eligible for remining under section 404 or 402(g)(4) of SMCRA that was not contemplated by the applicable surface coal mining and reclamation permit.

2. 30 CFR Part 773—Requirements for Permits and Permit Processing

OSM proposes to amend Section 773.15, Review of Permit Applications, in two ways.

A new proposed subparagraph (c)(13) would require the regulatory authority to utilize data and analyses provided under existing permit information rules and proposed § 785.25, discussed in the next section, in order to find that the proposed permit area contains lands eligible for remining and to set a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute "unanticipated events or conditions" for the purpose of applying the permit-block exclusion of proposed paragraph (f) of § 773.15.

The regulatory authority would evaluate the potential environmental and safety problems and associated analysis provided by the applicant based on a review of procedures used, supporting data and documentation, and mitigation plans. After acceptance of the estimates and findings provided by the applicant, the regulatory authority would set the threshold. The threshold which will be determined on a case-by-case basis is therefore set at permit issuance.

OSM believes the information provided by the applicant under proposed new § 785.25, which contains additional permit requirements tailored specifically to remining problems, is compatible with the development of a threshold. Two elements of proposed 785.25 are considered to be particularly well suited for this purpose: 1. The permit applicant's estimate of the maximum impacts associated with each identified potential environmental or safety problem; and 2. the permit applicant's estimate of the probability of each potential environmental or safety problem occurring. Furthermore, OSM believes that a threshold expressed quantitatively in terms of either or both of these two elements would provide the clearest guidance for operators, be easier to regulate for the regulatory authorities, and would minimize subsequent controversy and disputes between the operator and regulatory authority as to what events or conditions were indeed "unanticipated".

OSM is therefore seeking comments on three issues associated with formulating a threshold: 1. Whether either or both of the two elements described above, or some combination of the two, would provide an appropriate base for such formulation; 2. methods by which the base may be expressed in quantifiable terms; and 3. whether additional guidance is needed for the regulatory authority in the final rule and what the nature of that guidance should be.

Proposed paragraph (f) would be added to implement the Energy Policy Act's section 2503(a) mandate for an exclusion from permit blocking provisions of 510(c) of SMCRA. The proposed rule would waive the permit-block provisions of paragraph (b) of § 773.15 in cases where a violation occurred at a remining site and the violation was attributed to an unanticipated event or condition. In such cases, the person holding the remining permit would not be rendered ineligible for a new permit based on the violation. Statutory authority for the permit-block exclusion would expire on September 30, 2004.

The scope of the permit-block exclusion of proposed paragraph (f) derives from the statutory term "violation resulting from an unanticipated event or condition at a surface coal mining operation." The question has arisen whether the non-payment of delinquent penalties assessed after a notice of violation or a failure-to-abate cessation order based on an "on the ground" violation resulting from an unanticipated event or condition should be covered by the Energy Policy Act exclusion. Such delinquencies, which are violations, would be covered by the exclusion if they were construed as "resulting from an unanticipated event or condition at a surface coal mining operation." OSM is seeking comments on the extent to which such violations should be covered by the exclusion in section 2503(a) of the Energy Policy Act.

Another question that might arise is whether the operator of a previously undisturbed site would be subject to permit blocking for an unabated violation on his site which originated from an unanticipated event on a nearby or adjacent remining operation. Whether or not an event or condition on an adjacent site is a violation is a fact specific inquiry and depends on whether the surface coal mining operation on the adjacent site caused or contributed to the event or condition. Therefore, if the operator of the previously undisturbed site contributed to the event or condition which originated on the remining site and that operator does not abate the violation, the operator of the previously undisturbed site would be permit blocked. The proposed paragraph (f) exemption for permit blocking only relates to violations occurring on lands eligible for remining.

OSM is seeking comments on any other examples of the interplay between remining operations and adjacent surface coal mining operations that may need to be explained in the final rulemaking.

3. 30 CFR Part 785—Requirements for Permits for Special Categories of Mining

OSM proposes to add new § 785.25, Lands eligible for remining. (Sections 785.23 and 785.24 are being reserved for a separate rulemaking.) The permit requirements in proposed section 785.25 for operations on lands eligible for remining are intended to supplement information requirements in existing rules as they would apply to operations on lands eligible for remining. The types of new permit information being proposed would be required only to the extent that they are not provided under existing regulations. For example, provisions related to the determination of probably hydrologic consequences at §§ 780.21 and 784.14 of the permanent program regulations require baseline information on flow and quality of ground water and surface water and an

estimate of the impacts of the proposed operation on these baseline conditions such as findings on: Whether adverse impacts may occur to the hydrologic balance; whether acid-forming or toxic-forming materials are present that could contaminate surface or ground water supplies; and whether surface or ground water used for any legitimate purpose in the permit or adjacent area will be contaminated, diminished or interrupted.

The permit requirements of §§ 780.21 and 784.14 were intended to identify and control probable impacts to hydrology from coal removal associated with the first time disturbance of the land. Hence, they do not in most cases address the unique environmental or safety problems and impacts that can arise from the redisturbance of abandoned mine lands. The proposal would fill in this gap by focusing on the identification of: Potential environmental and safety problems specific to lands eligible for remining; maximum impacts that could result and the probability for the type of problem to occur; and mitigation measures to meet applicable performance standards. The purpose of these requirements is to provide the regulatory authority with a sound basis for setting a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to be unanticipated at the site. Furthermore, these requirements will help to ensure that potential environmental and safety problems commonly linked to abandoned mine land sites are not overlooked at the permitting stage and, thus, inadvertently contribute to the occurrence of unanticipated events or conditions which might result in more severe environmental or safety problems from the remining operation than may currently exist at the site.

Thus, OSM believes it is essential that all reasonable evaluations be conducted in order to identify the probability for serious environmental or safety problems to occur. While there are potential economic and environmental benefits to be gained through remining, there also exists the potential for significant environmental degradation and safety problems. For example, if a remining operation unintentionally caused a sudden discharge of water or blowout from an adjacent water-filled abandoned mine, significant quantities of acid mine discharge could be released and create severe ecological harm in the receiving streams. It is important, therefore, in granting remining permits that the applicant identify the potential environmental and safety problems associated with the site, maximum impacts associated with these problems, and the probability for each type of problem to occur. These categories of information will assist the regulatory authority in setting a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute unanticipated events or conditions. In order to provide a permit applicant for a remining operation some certainty regarding the potential scope of the 510(c) permit-blocking provision, the applicant shall be expected to provide all required information related to the potential environmental and safety problems of the remining site.

OSM recognizes the difficulty of accurately predicting certain impacts such as acid mine drainage even on the basis of extensive baseline information. OSM is therefore soliciting comments on other specific information needed to be provided by the applicant that will be useful in developing a threshold for unanticipated events.

OSM is also requesting estimates on the number of hours to develop the information required by § 785.25 and is seeking suggestions on efficient and effective ways to develop this information and present it in the permit application.

4. 30 CFR Part 816—Permanent Program Performance Standards—Surface Mining Activities

OSM is proposing to amend subparagraphs (c)(2) and (c)(3) of section 816.116, Revegetation: Standards for Success. The change at (c)(2) would reduce the period of applicant responsibility for revegetation success at sites eligible for remining from five to two years in areas of more than 26.0 inches of average annual precipitation and for these sites provide that vegetative parameters for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. The change at (c)(3) would reduce the applicant responsibility for revegetation success from ten to five years in areas of 26.0 inches or less of annual average precipitation. The authority for these changes would expire on September 30, 2004.

5. 30 CFR Part 817—Permanent Program Performance Standards—Underground Mining Activities

OSM is proposing to amend subparagraphs (c)(2) and (c)(3) of § 817.116, Revegetation: Standards for Success. The change at (c)(2) would reduce the period of applicant responsibility for revegetation success from five to two years in areas of more than 26.0 inches of average annual precipitation, and the change at (c)(3) would reduce the applicant responsibility for revegetation success from ten to five years in areas of 26.0 inches or less of annual average precipitation. The authority for these changes would expire on September 30, 2004.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 NC, 1951 Constitution Ave., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0040 and 1029–0041), Washington, DC 20503.

Executive Order 12778; Civil Justice Reform Certification

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's regulations. Any State law that is inconsistent with or that would preclude implementation of the proposed regulation would be subject to preemption under section 505 of SMCRA and its implementing regulations at 30 CFR 730.11.

Section 505(b) of that act provides that any provision of State law which

provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of SMCRA or any regulations issued pursuant thereto shall not be construed to be inconsistent with SMCRA. Therefore, to the extent that the proposed regulation would provide less stringent land use and environmental controls than presently contained in State law, the proposed regulation would not preempt the State provisions and would not necessitate changes to approved State programs. A more definitive answer to this question will depend on the provisions of any final rule adopted in this rulemaking.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This proposed rule modifies the implementation of SMCRA, as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this proposed rule specifies the Federal regulatory provisions that are affected by this proposed revision.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA. The purpose of this proposed rule is to establish clear and certain standards in order to implement a more effective program.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this proposed rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this proposed rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this proposed rule are set forth in 30 CFR 700.5, 701.5, 773.15 and 785.23. New definitions are located in section 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office Management and Budget have not issued any guidance on this requirement.

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et, seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This determination is based on the findings that the regulatory additions is the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is: Douglas J. Growitz, P.G., Hydrologist, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640 NC, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202–343–1507.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 773

Reporting and recordkeeping requirements, Administrative practice and procedure, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: May 11, 1994.

Nancy Keir Hayes,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, OSM proposes to amend 30 CFR parts 701, 773, 785, 816 and 817 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

2. Section 701.5 is amended by adding alphabetically definitions of "lands eligible for remining" and "unanticipated event or condition" as follows:

§ 701.5 Definitions.

* * * * *

Lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

* * * * *

Unanticipated event or condition as used in §§ 773.15 and 785.25 of this chapter means an event or condition at a surface coal mining operation on lands eligible for remining that was not contemplated by the applicable permit

to conduct surface coal mining operations.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*; and Pub. L. 102–486.

4. Section 773.15 is amended by adding new paragraphs (c)(13) and (f) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(c) * * *

(13) Based upon the data and analyses provided under parts 779, 780, 783, and 784, as applicable, and § 785.25 of this chapter, the regulatory authority has: (i) determined that the permit contains lands eligible for remining; and (ii) set a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(f) of this chapter.

* * * * *

(f) *Lands eligible for remining.* Until September 30, 2004, the prohibitions of paragraph (b) of this section shall not apply to any violation resulting from an unanticipated event or condition at a surface coal mining and reclamation operation on lands eligible for remining under a permit held by the person making such application.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

6. Section 785.25 is added to read as follows:

§ 785.25 Lands eligible for remining.

(a) This section applies to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems associated with the site, the maximum degree of impact attributable to each problem, and the probability that each type of problem will occur. These problems would include but are not limited to impacts of acid mine drainage on the hydrologic balance, sudden discharges of water from adjacent water-filled mine workings, and sediment and safety issues associated with abandoned spoil.

(2) Describe mitigative measures for each potential environmental or safety problem in order to meet applicable performance standards.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS-SURFACE MINING ACTIVITIES

7 The authority citation for part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

8. Section 816.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(c)(2) In areas of more than 26.0 inches of annual average precipitation the period of responsibility shall continue for a period of less than five full years, except that on lands eligible for remaining, the period of responsibility (until September 30, 2004) shall be two full years. In areas with a five-year period of responsibility, the vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. In areas with a two-year period of responsibility, the vegetative parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years, except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be five years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

10. Section 817.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(c)(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years, except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two full years. In areas with a five-year period of responsibility, the vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. In areas with a two-year period of responsibility, the vegetative parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years, except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be five years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

* * * * *

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Thursday
June 2, 1994

Part VI

Environmental Protection Agency

Sole Source Aquifer Designation of the Marrowstone Island Aquifer System, Jefferson County, Washington; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4891–2]

Sole Source Aquifer Designation of the Marrowstone Island Aquifer System, Jefferson County, WA

AGENCY: Environmental Protection Agency.

ACTION: Final Determination.

SUMMARY: The Region 10 Administrator of the Environmental Protection Agency (EPA) has determined that the Marrowstone Island Aquifer System is the sole or principal source of drinking water for the designated area, and if contaminated, would create a significant hazard to public health. This action was taken under the authority of section 1424(e) of the Safe Drinking Water Act in response to a petition submitted to EPA by the Marrowstone Island Community Association on August 27, 1991. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1 Eastern time on June 16, 1994.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Library, 10th floor, Park Place Building, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Section, WD–133, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 206–553–0682.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of section 1424(e) of the Safe Drinking Water Act (42 United States Code, 300f, 300h-3(e), Pub. L. 93–523). The information upon which EPA is issuing this final determination has been summarized in the "Support Document for Sole Source Aquifer Designation of the Marrowstone Island Aquifer System", EPA 910/R–94–002.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

EPA further defines a "Sole Source Aquifer" (SSA) as one which supplies at least 50 percent of the drinking water to persons living in the area overlying the aquifer and in areas supplied by the aquifer, and if contaminated, would create a significant hazard to public health. Designations can be made for entire aquifers, hydrogeologically connected aquifers (aquifer systems), or part of an aquifer if that portion is hydrogeologically separated from the rest of the aquifer. EPA guidelines further stipulate that these areas can have no feasible alternative source(s) of drinking water of sufficient volume which could replace the aquifer, should it become contaminated.

Although EPA has the authority to initiate SSA designations, the Agency has a policy of acting only in response to petitions. Petitions may be submitted to EPA by any individual or organization and must address procedures and criteria outlined in the "Sole Source Aquifer Designation Petitioner Guidance", EPA 440/6–87–003.

EPA Region 10 received a petition from the Marrowstone Island Community Association on August 27, 1991, and after an initial review, the petition was declared complete on September 19, 1991. A more detailed technical review was completed in February of 1994. EPA's findings and basis for the proposed designation were documented and made available for public review in EPA publication 910/R–94–002.

II. Basis for Determination

The Region 10 Administrator has determined that the Marrowstone Island Aquifer System meets all applicable SSA designation criteria established through Federal statute and EPA guidance documents, as follows:

1. The Marrowstone Island Aquifer System supplies approximately 98 percent of the drinking water to persons living on the island;

2. As the principal drinking water source for the area, contamination of the Marrowstone Island Aquifer System would create a significant hazard to public health;

3. The boundary was determined in accordance with EPA guidance and is representative of an aquifer system that encompasses the entire Marrowstone Island area and includes all potable water-bearing geologic units underlying the Island;

4. There are no feasible alternative source(s) of drinking water which could replace the Marrowstone Island Aquifer System, should it become contaminated.

III. Description of the Marrowstone Island Aquifer System

Note: Some information in this section represents an unfootnoted summary from the "Support Document for Sole Source Aquifer Designation of the Marrowstone Island Aquifer System", EPA 910/R–94–002.

Marrowstone Island is an elongate island located in the northern Puget Sound area of Jefferson County, Washington, near the City of Port Townsend. The island is approximately eight miles long and one mile wide and reaches a maximum elevation of approximately 180 feet above mean sea level.

Marrowstone Island Aquifer System boundaries are representative of an aquifer system that encompasses the entire Marrowstone Island area. The aquifer system is bounded by the shorelines of Admiralty Inlet, Kilisut Harbor, and Oak Bay. A straight line boundary divides Indian Island from Marrowstone Island in the southwest corner of the Island. The vertical extent of the aquifer system at depth includes all potable water-bearing geologic units underlying the Island. Water level data indicates that all deposits underlying the Island are hydrogeologically connected.

Water quality studies have discovered elevated chloride concentrations that indicate seawater intrusion is occurring in the fresh water aquifer system underlying the Island. This intrusion of seawater is the result of increased pumping of the aquifers, which in turn, is attributable to the increase in Island population. Other potential sources of contamination include many normal rural activities, such as improper pesticide storage and use, improper disposal of used motor oil and other household hazardous wastes, and poorly-sited or maintained storm water drainage wells, animal waste storage facilities, on-site septic systems, and underground storage tanks.

Population of the Island varies by season, with the highest population occurring in the summer, and lowest in

the winter. There are approximately 900 permanent residents of the Island. During a peak summer weekend, the population increases by about one-third for a total maximum population of 1300 people. There may be as few as 600 resident water users on a typical winter weekday.

Approximately 98 percent of the water consumed on the Island is ground water pumped from the aquifer system by about 400 private wells. Roughly one percent of water used on the Island is collected in rainwater collection systems and used primarily for livestock consumption and outside watering of lawns and gardens. Another one percent is obtained from Fort Flagler State Park which receives water via pipeline from a U.S. Naval Undersea Warfare Detachment facility on Indian Island. There are no physical, legal, or economically feasible alternative source(s) of drinking water that could replace the aquifer system.

IV. Project Reviews

Designation of a sole source aquifer authorizes EPA to review federal financially-assisted projects proposed within the designated area. The principal mechanism used by EPA Region 10 to identify projects for review are Memorandums of Understanding (MOUs) with federal funding agencies. These MOUs outline procedures for screening and referring projects to EPA in order to ensure that only projects which may have a significant impact to ground water quality are reviewed.

Most projects referred to EPA for review meet all federal, state, and local ground water protection standards and are approved without any additional conditions being imposed. Occasionally, site or project-specific concerns for ground water quality protection lead to specific recommendations or additional pollution prevention requirements as a condition of funding. In rare cases, federal funding has been denied when the applicant has been either unwilling or unable to modify the project.

Whenever feasible, EPA coordinates the review of proposed projects with other offices within EPA and with various federal, state, or local agencies that have a responsibility for ground water quality protection. Relevant information from such sources is given full consideration in the sole source aquifer review process. This coordination of project reviews can complement, support, and strengthen existing ground water protection mechanisms.

V. Public Comments

A public notice was issued on March 21, 1994, to request comments on the proposed designation and announce that a public hearing would be held if sufficient interest were expressed to EPA in advance. The hearing was subsequently cancelled due to a lack of interest. Only two written comments were received prior to the expiration of the public comment period on May 10, 1994. One letter was from a part-time Marrowstone Island resident who expressed support for the proposed designation. The other letter was from the president of the Marrowstone Island Community Association and also expressed support for the proposed designation. Neither party requested a public hearing.

VI. Summary

This determination affects only the Marrowstone Island Aquifer System located in the State of Washington. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: May 19, 1994.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc 94-13452 Filed 6-1-94; 8:45 am]

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Federal Register

Thursday
June 2, 1994

Part VII

The President

Proclamation 6698—National Women in Agriculture Day, 1994

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

Presidential Documents

Title 3—

The President

Proclamation 6698 of May 31, 1994

National Women in Agriculture Day, 1994

By the President of the United States of America

A Proclamation

Few images are more traditionally American than the vast geometric tapestry of plowed fields and lush crops that carpet our country. Since our Nation's founding, farms have defined both the topography of our land and the steadfastness of our national character. Farm families take particular pride in knowing that women—as field workers and financial managers, as mothers and homemakers—have been a vital, driving force in sustaining this essential enterprise from its beginnings.

Today, American agriculture encompasses far more than a quiet picture of pastoral beauty. Our Nation's farmers grow the food that feeds the world. Merging old-fashioned know-how with the latest innovations in production technology, farmers across the United States work to ensure that our markets are filled with low-cost, high-quality goods. With wise leadership and firm support, women in their myriad roles in our agriculture industry reflect the proud American commitment to excellence.

As we celebrate National Women in Agriculture Day 1994, we recognize new ways in which women's energy and determination are helping to keep our agricultural system strong. Whether in investigating the ecosystem of a Brazilian rain forest or in exploring new opportunities in international trade, women are working to enhance efficiency and competitiveness in American agribusiness—a mission that benefits all of the Earth's people.

With an abiding love for their families and a deep understanding of the challenges farmers face, women have urged our Nation to action in areas from environmental protection to providing health care to every one of our citizens. Their personal experiences of hard work and cooperation have made the world of American agriculture thrive. Just as important, they have demonstrated to all of us the strength of compassion and the power of perseverance. For this lesson and for the gifts of their labor we enjoy every day, our Nation's women in agriculture have our heartfelt gratitude.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 9, 1994, as "National Women in Agriculture Day." I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-13637
Filed 6-1-94; 11:15 am]
Billing code 3195-01-P

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Vol. 59, No. 105

Thursday, June 2, 1994

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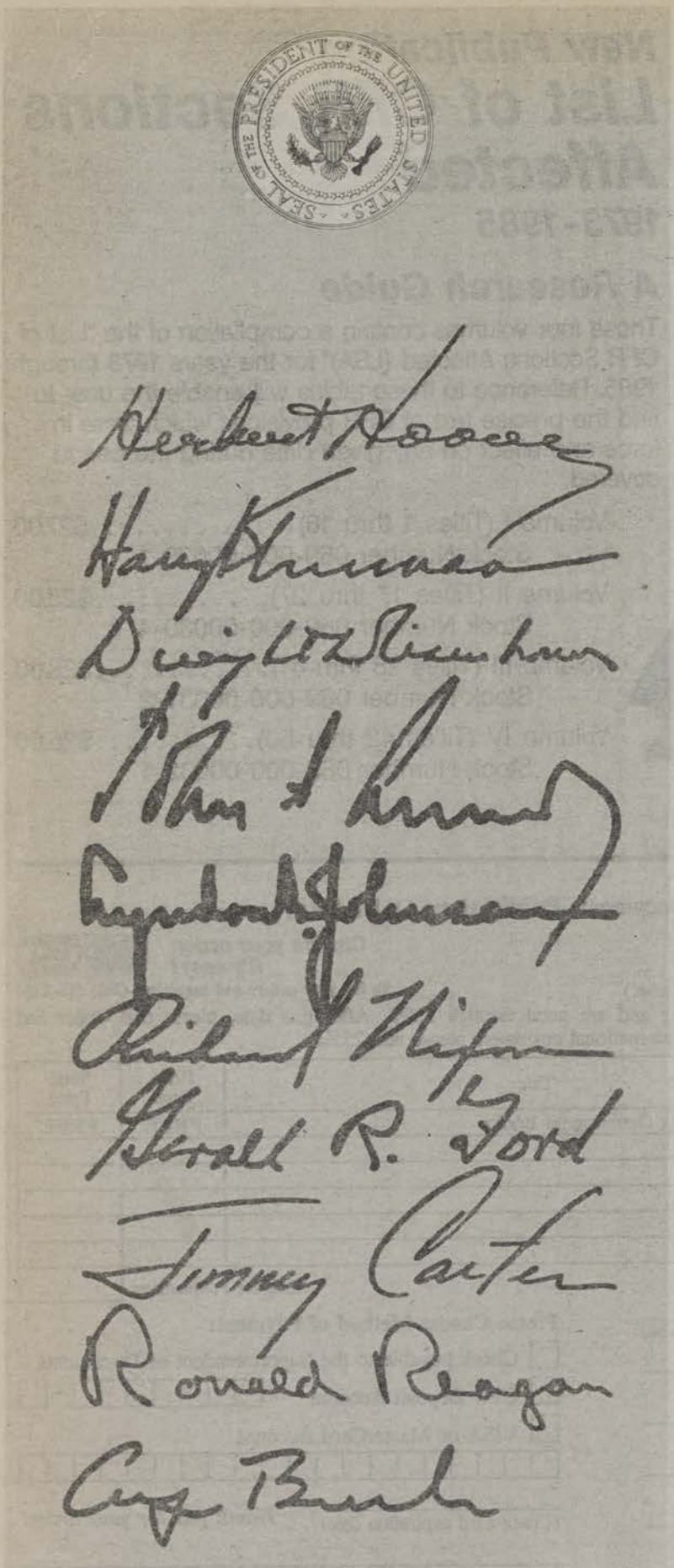

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